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SUPREME COURT, U.S.

81-6606

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO.

MARVIN FRANCOIS,

Petitioner,

vs.

THE STATE OF FLORIDA

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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QUESTIONS PRESENTED FOR REVIEW

I

WHETHER THE SUPREME COURT OF FLORIDA'S ARBITRARY REFUSAL TO REVIEW THE PETITIONER'S MERITORIOUS EQUAL PROTECTION CLAIM BASED ON UNDERREPRESENTATION OF HIS RACE ON DADE COUNTY'S GRAND JURIES IS IN DIRECT CONFLICT WITH DECISIONS OF THIS COURT AND PRESENTS CONSTITUTIONAL QUESTIONS OF VITAL AND CONTINUING IMPORTANCE TO THE CRIMINAL JUSTICE SYSTEM?

II

WHETHER THE SUPREME COURT OF FLORIDA'S ARBITRARY IMPOSITION OF THE DEATH PENALTY IN THIS CASE WITHOUT REMAND FOR RESENTENCING BY THE TRIAL COURT DIRECTLY CONFLICTS WITH DECISIONS OF THE UNITED STATES COURTS OF APPEALS AND CONCERNS A CONSTITUTIONAL QUESTION OF VITAL IMPORTANCE PRESENTLY BEING CONSIDERED BY THIS COURT IN STEPHENS V. ZANT, 631 F.2d 397 (5th Cir. 1980) CERT. GRANTED _____U.S._____,102 S.Ct. 90 (1981)?

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THE STATE OF FLORIDA,

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioner, MARVIN FRANCOIS, respectfully urges that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Florida rendered on January 28, 1982.

OPINION BELOW

The full opinion of the Supreme Court of Florida is attached as part of Petitioner's Appendix. (App. 1-8). The reported opinion appears at 407 So.2d 885.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3), to review the judgment and opinion of the Supreme Court of Florida. That judgment and opinion was entered on October 15, 1981. (App. 1-8). A timely petition for rehearing was denied on January 28, 1982. (App. 1). An order extending the time for the filing of this Petition up to and including April 28, 1982, was entered by the Honorable Justice Powell on March 22, 1982.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Eighth and Fourteenth Amendments to the Constitution of the United States.

2. This case also involves the provisions of Florida law set forth in the Appendix.

STATEMENT OF THE CASE

Petitioner Francois was convicted on six counts of first-degree murder, two counts of attempted first-degree murder and three counts of robbery in the Circuit Court of the Eleventh Judicial Circuit of Florida. (App. 3). As a result of his conviction, the petitioner was sentenced to death. (App. 3).

Prior to his trial, the Petitioner filed a motion to dismiss the indictment[1] which charged him with the aforementioned offenses. (App. 9-17). In his motion, the Petitioner alleged that he had been denied equal protection and due process of law because the grand jury that had indicted him was illegally constituted. (App. 10, 11). Specifically, the Petitioner alleged that there had been a substantial disparity between the percentage of blacks[2] and Hispanics in Dade County's eligible population and the percentage of these groups on venires selected for grand jury service, for the five year period preceding the return of the challenged indictment. (App. 10, 11). In support of his motion, the petitioner attached exhibits and affidavits which included statistical data reflecting the racial composition (percentage of blacks and latins) of Dade County's general population, registered voters, grand jury master list[3] and actual grand juries. (App. 18-96). Petitioner's statistical proffer demonstrated an average actual disparity of 9.38% among blacks

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1 The Constitution of the State of Florida requires that offenses which are punishable by death shall be prosecuted by indictment. Florida Constitution, Article I, Section 15.

2 Petitioner Francois is black.

3 The grand jury master lists were not made available to the petitioner although they were requested from the Clerk of the Circuit Court prior to trial. (App. 20). Additionally, the petitioner moved for disclosure of the master lists as part of his motion to dismiss. (App. 9-11). As a result of the trial court's denial of his motion to dismiss, the master lists were never provided to Petitioner. The master list percentage in petitioner's exhibits were estimated after taking into account the actual grand jury percentages and Florida's statutory requirement that the actual grand jury be randomly selected from the grand jury master list. Chapter 57-550 and Chapter 70-1000, Laws of Florida.

and 20.6% among Latins, when comparison is made of the average eligible population and master list[4] percentage for each group. (App. 19). Utilizing the Comparative Disparity Standard[5], these figures establish that blacks and latins were underrepresented on the grand juries of Dade County by 68.47% and 70.81%, respectively.

On April 17, 1981, the trial court denied the Petitioner's motion to dismiss without an evidentiary hearing, finding that the grand jury was legally constituted. (App. 136). At the conclusion of the petitioner's trial and after an advisory sentence of death was received from the jury, the trial court, finding that there were seven aggravating circumstances[6] and no mitigating circumstances sustained by the evidence, imposed the sentence of death. (App. 3, 6).

On direct appeal, the Supreme Court of Florida refused to review the grand jury challenge raised by the petitioner in the lower court. Although finding that the petitioner's motion had been timely filed, the Supreme Court of Florida held that petitioner had waived his right to appeal the trial court's denial of his motion because defense counsel, as a defense tactic to upset the petitioner's convictions on appeal, waited until the day of trial to argue his motion to dismiss. (App. 5).

On review of petitioner's sentence, the Supreme Court of Florida held that the trial court had erred in finding three of the seven aggravating circumstances upon which the petitioner's death sentence was based. (App. 6, 7). Relying on the lack of mitigating circumstances, the Supreme Court of Florida nevertheless upheld the petitioner's death sentence. (App. 7).

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4 Since the percentage of blacks actually serving on grand juries was slightly higher than the percentage estimated for the master list, 4.32% as against 4.0%, the larger figure will be used in this Petition for analysis purposes. The estimated percentage of Latins on the master list, 3.0% was slightly greater then the percentage of Latins actually serving, 2.15%. Again, the greater figure will be used in this Petition for the purposes of analysis.

5 See D. Kairys, Jury Representativeness: A Mandate for Multiple Source Lists, Cal.Law Rev. Vol. 65, 776, 790.

6 Section 921.141(5), Florida Statutes.

Due to the clear conflict among the decisional law of this Court, the United States Courts of Appeals and the Supreme Court of Florida's decision in the instant case, and due to the important questions of federal constitutional law herein raised, this petition for writ of certiorari is hereby presented pursuant to Rule 17 of this Court.

ARGUMENT

I

REASON FOR GRANTING THE WRIT

THE SUPREME COURT OF FLORIDA'S ARBITRARY REFUSAL TO REVIEW THE PETITIONER'S MERITORIOUS EQUAL PROTECTION CLAIM BASED ON UNDERREPRESENTATION OF HIS RACE ON DADE COUNTY'S GRAND JURIES IS IN DIRECT CONFLICT WITH DECISIONS OF THIS COURT AND PRESENTS CONSTITUTIONAL QUESTIONS OF VITAL AND CONTINUING IMPORTANCE TO THE CRIMINAL JUSTICE SYSTEM.

Since 1880, the Equal Protection Clause of the Fourteenth Amendment has precluded conviction of an accused upon an indictment which was returned by a grand jury from which members of the accused's race were excluded solely because of their race. Strauder v. West Virginia, 100 U.S. 303, 310 (1880). Subsequent decisions of this Court have held that substantial underrepresentation of any recognizable class violates equal protection where there had been an intent to discriminate. Casteneda v. Partida, 430 U.S. 482, 493 (1917); Swain v. Alabama, 380 U.S. 202 (1965). Intent to discriminate is presumptively proved by statistical evidence which demonstrates that over a period of time the degree of underrepresentation has been substantial. Casteneda v. Partida, 430 U.S. at 494; Washington v. Davis, 426 U.S. 229, 241 (1976); Alexander v. Louisiana, 405 U.S. 625, 630-31 (1972). Furthermore, proof that the procedure which selected the grand jurors is "susceptible of abuse or is not racially neutral supports the presumption of [intentional] discrimination raised by the statistical showing." Casteneda v. Partida, 430 U.S. at 494 (citations omitted).

Standing to assert an equal protection claim of underrepresentation is achieved when the accused demonstrates

that he is a member of "recognizable, distinct class, singled out for different treatment under laws, as written or applied." Casteneda v. Partida, 430 U.S. at 494. Blacks, latins and women have been judicially recognized as distinct classes to which relief may be granted. Strauder v. West Virginia, 100 U.S. at 309 (blacks); Hernandez v. Texas, 347 U.S. 475, 480 (1954) (latins); Taylor v. Louisiana, 419 U.S. 522, 537 (1975) (women).

The burden of proving substantial underrepresentation rests with the accused. Casteneda v. Partida, 430 U.S. at 494. However, "[o]nce the defendant has shown substantial underrepresentation of his group, he had made out a prima facie case of discriminatory purpose, and the burden then shifts to the State to rebut that case." Casteneda v. Partida, 430 U.S. at 495; Alexander v. Louisiana, 405 U.S. at 631-32.

Applying these principles to this case, the record demonstrates that the indictment should have been dismissed or, in the alternative, an evidentiary hearing should have been held because of the substantial underrepresentation of blacks on the venire from which the grand jury had been selected and because the system which produced this result had, over a significant period of time, repeated this pattern of underrepresentation. See, Coleman v. Alabama, 377 U.S. 129 (1964).

The grand jury which indicted the Petitioner was randomly selected from a pool of five hundred individuals personally chosen by Dade County's circuit judges. (App. 15, 16, 139-146). Chapter 57-550 and Chapter 70-1000, Laws of Florida.[7] If blacks were properly represented among the individuals selected by the circuit judges for grand jury service, the random selection process required by Florida law would assure that blacks would be properly represented on Dade County's grand juries. Casteneda v. Partida, 430 U.S. at 496, footnote 17. An examination of the statistics proffered reveals that blacks were severely underrepresented on Dade County's grand juries for a period of

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[7] This procedure for selection of grand jurors was abandoned in May, 1978, in favor of a computer selection method. Chapter 78-455, Laws of Florida.

five years. (App. 19). The only explanation for the large disparity between the average percentage of blacks serving on grand juries and the percentage of blacks in the general population is that the judges had failed to choose sufficient numbers of blacks for the pool of potential grand jurors. (App. 21).

In Casteneda v. Partida, supra, this Court exhaustively analyzed the equal protection problems arising from state laws which direct officials to personally, rather than randomly select individuals for grand jury service. The evidence in Casteneda showed that in a county which was 79.1% Mexican-American, only 39% of the individuals summoned for grand jury service were of such descent. Applying statistical analysis, this Court concluded that this result could not have been achieved by random causes. Where a selection process results in underrepresentation which cannot be explained by random causes, this Court held that presumptive proof of substantial underrepresentation and a discriminatory purpose had been established. Casteneda v. Partida, 430 U.S. at 495-96.

The Petitioner, a black male, clearly has standing to challenge black underrepresentation. Alexander v. Louisiana, supra. Petitioner's statistical data demonstrated an absolute differential of 10.88% (15.2-4.32) between the average percentage of blacks in the general population[8] and the average percentage of blacks randomly selected for grand jury service. (App. 19). Application of the Comparative Disparity Standard reveals that blacks were underrepresented on Dade County's grand juries by 70.72%[9]. (App. 19). This figure of 70.72% underrepresentation indicates that a black has a 70.72% less chance of being included on a grand jury than a non-black. The probability of by chance selecting only eight blacks for grand jury service over a four-

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[8] Application of average eligible population percentages rather then general population percentages as advocated by Cheif Justice Burger in his dissent in Casteneda, yields the following disparity, 9.38%,and consequent underrepresentation of 68.47%.

[9] This figure is derived from the following equation: 15.2-4.32 x 100÷15.2 = 70.72%.

year period was determined to be less then one in one thousand. (App. 21).

The petitioner's statistical proffer was sufficient to establish a prima facie case of discrimination in the process by which Dade County's grand juries were selected. Casteneda v. Partida, 430 U.S. at 494-5; Alexander v. Louisiana, 405 U.S. at 631-2. The trial court, however, without the benefit of an evidentiary hearing as requested by petitioner, denied the petitioner's motion to dismiss the indictment finding that the grand jury had been lawfully constituted. (App. 136). The trial court's ruling was plainly error.[10] Casteneda v. Partida, supra; Alexander v. Louisiana, supra; Turner v. Fouche, 396 U.S. 346 (1970); Jones v. Georgia, 389 U.S. 24 (1967).

The Supreme Court of Florida's refusal to consider the petitioner's grand jury challenge on direct appeal supports the necessity for the issuance of the Writ in this cause. The Supreme Court of Florida, relying on this Court's decisions in Francis v. Henderson, 425 U.S. 536 (1976) and Davis v. United States, 411 U.S. 233 (1973), held that the petitioner had waived his right to appeal because the Court perceived that defense counsel had engaged in improper tactics by requesting a hearing on his motion to dismiss on the day of trial. (App. 5). The Supreme Court of Florida opined that defense counsel's delaying tactics were directed at upsetting his conviction on appeal.

The Supreme Court of Florida's conclusion that the petitioner had waived his right to appeal the denial of his grand jury challenge was not based on any concept of waiver known to Florida's statutes or rules of procedure. In fact, the Supreme Court of Florida specificallly found that petitioner's challenge was timely made and was otherwise in accordance with Florida Rule

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10 Due to the nature of the trial court's ruling, the respondent placed no evidence in the record rebutting, as they must, the petitioner's prima facie showing. Alexander v. Louisiana, 405 U.S. at 632; Turner v. Fouche, 396 U.S. 346, 361 (1970). In Florida courts, factual matters alleged in motions to dismiss are deemed when not specifically denied by the state. Fla.R.Crim.P. 3.190(d).

of Criminal Procedure 3.190,[11] the rule governing motions to dismiss in the State of Florida. The trial court, perceiving no waiver by petitioner's counsel, ruled on the merits of petitioner's challenge, albeit without an evidentiary hearing. (App. 136). The Supreme Court of Florida, reading between the lines of the transcripts of the pre-trial hearings, perceived improper motives that the trial court had not.[12] (App. 5). The Supreme Court of Florida's reliance on Francis v. Henderson, supra, and United States v. Davis, supra, for its refusal to review petitioner's claim is misplaced.

In Francis v. Henderson, supra, a state prisoner sought federal habeas corpus relief grounded upon a claim that blacks had been excluded from the grand jury that had indicted him. The prisoner, Francis, had not raised his grand jury challenge at the time of trial, as was required by Louisiana law. Francis did not appeal his conviction. Instead, Francis sought federal habeas corpus relief six year after his trial. This Court held that Francis should be denied federal habeas corpus relief and that effect be given to the waiver provisions of Louisiana law unless Francis could demonstrate cause for his waiver and actual prejudice resulting from the claimed error.

This Court has reaffirmed the principles of Francis v. Henderson, supra in Wainwright v. Sykes, 433 U.S. 72 (1977) and more recently in Engle v. Isaac, ____U.S.____(Case No. 80-1430, Op. filed 4/5/82). These cases now clearly stand for the

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11 Florida Rules of Criminal Procedure 3.190 requires that motions to dismiss be filed at or before arraignment unless the court grants a defendant additional time. The Supreme Court of Florida correctly determined that the petitioner timely filed his petition within the time as extended by the Court, thereby avoiding the waiver provision of subsection (c) of the rule. The rule otherwise anticipates only that the motion be heard prior to trial.

12 Chief Justice Sundberg in his dissenting opinion to the majority opinion of the Supreme Court of Florida found no improper motives in the actions of petitioner's counsel. Justice Sundberg instead found that counsel originally attempted to defer consideration of his grand jury claim in order to prepare for that as well as the other numerous issues in petitioner's complex trial. (App. 7, 8). Justice Sundberg concluded that petitioner's statistical proffer had established a prima facie case of an illegally composed grand jury and was entitled to an evidentiary hearing. (App. 8).

proposition that a state prisoner may not obtain federal habeas relief, absent a showing of cause and actual prejudice, when a procedural default barring state litigation of a constitutional claim has occurred. Engle v. State, supra.

It is likewise clear that Francis v. Henderson, supra, and its progeny do not support a state court's refusal to review a constitutional claim where there has been no state precedural default by a state prisoner. In this case, the petitioner complied with Florida's procedural requirements with regard to his grand jury challenge. (App. 4, 5, 147-149). The trial court below had an opportunity to and did rule on the merits of the petitioner's claim. (App. 136). These factors distinguished this case from the factual patterns present in Francis v. Henderson, supra, Wainwright v. Sykes, supra and Engle v. Isaac, supra. The actions of petitioner's trial counsel, which were consistent with the requirements of Florida law, served as no impediment to review by the Florida Supreme Court and clearly do not serve as a bar to review by this Court. The Supreme Court of Florida's perception of improper motives, a perception which is unsupported by the record and plainly inconsistent with petitioner's compliance with Florida procedural rules, is not an "independent and adequate state procedural ground" which could prevent review by this Court. Wainwright v. Sykes, 433 U.S. at 86, 87. Williams v. Georgia, 349 U.S. 375 (1955)(discretionary decision by State Supreme Court to refuse to hear petitioner's constitutional claim reviewable by this Court); Davis v. Wechsler, 263 U.S. 143 (1923).

The Supreme Court of Florida's arbitrary refusal to review petitioner's grand jury attack sharply conflicts with the due process requirements that a full and fair resolution of the merits be afforded to persons convicted of crimes on their "one and only appeal". Douglas v. California, 372 U.S. 353, 357 (1963). It has long been established that the requirements of due process of law fully apply to the appellate process:

> . . . .[T]he proceedings in the appellate tribunal are to be regarded as part of the process of law under which [a convicted person] is held in custody, and

> to be considered in determining any question of alleged deprivation of his life or liberty contrary to the 14th Amendment. Frank v. Magnum, 237 U.S. 309, 327 (1915).

While this Court has never held that the States are required to establish appellate review procedures . . . .

> . . . It is now fundamental that, once established, these avenues must be kept free of unreasonable distinctions that can only impede open and equal access to the Court. Rinaldi v. Yeager, 384 U.S. 305 (1966)(citations omitted).

The Supreme Court of Florida's arbitrary refusal to review the petitioner's constitutional claim, coupled with the trial court's refusal to afford petitioner an evidentiary hearing on his motion to dismiss, violates the underpinnings[13] of the Engle v. Isaac, supra and Wainwright v. Sykes, supra, decisions as well as fundamental due process concepts of fairness. Intervention by this Court is required to correct the Supreme Court of Florida's erroneous and expansive interpretation of this Court's decision in Francis v. Henderson, supra, and to provide the petitioner with an opportunity to be fully and fairly heard on his meritorious equal protection claim derived from the illegally composed grand jury that indicted petitioner.

II

REASONS FOR GRANTING THE WRIT

THE SUPREME COURT OF FLORIDA'S ARBITRARY IMPOSITION OF THE DEATH PENALTY IN THIS CASE WITHOUT REMAND FOR RESENTENCING BY THE TRIAL COURT DIRECTLY CONFLICTS WITH DECISIONS OF THE UNITED STATES COURTS OF APPEALS AND CONCERNS A CONSTITUTIONAL QUESTION OF VITAL IMPORTANCE PRESENTLY BEING CONSIDERED BY THIS COURT IN STEPHENS V. ZANT, 631 F.2d 397 (5th Cir. 1980) CERT. GRANTED ____U.S.____, 102 S.Ct. 90 (1981).

In Proffitt v. Florida, 428 U.S. 242 (1976), this Court upheld the constitutionality of Florida's death-sentencing procedures, relying on the Supreme Court of Florida's reviewing role as a safeguard against arbitrary and capricious imposition

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13 The Engle decision contemplates good faith attempts by the states to honor an individuals constitutional rights. Engle v. Isaac, supra.

of the death penalty. In assessing its role as the tribunal for review of Florida's death-sentencing scheme, the Supreme Court of Florida noted, "it is not the function of this court to cull through what has been listed as aggravating and mitigating circumstances in the trial court's order, determine which are proper for consideraton and which are not, and then impose the proper sentence. Mikenas v. State, 367 So.2d 606, 610 (Fla. 1978). Yet, despite its protestations to the contrary, the Supreme Court of Flroida in this case culled through the list of aggravating circumstances found by the trial judge, determined which were applicable to the petitioner, speculated as to the weight probably given them by the trial court and imposed the death sentence. (App. 7). In doing so, the Supreme Court of Florida violated the petitioner's Eight and Fourteenth Amendment rights to be free from cruel and unusual punishment.

Pursuant to Section 921.141(3), Florida Statutes (1977), the trial court entered written findings in support of its sentence of death. (App. 6, 137, 138). In its order, the trial court found the following aggravating circumstances: 1) the petitioner had previously been convicted of a violent felony, Section 921.141(5)(b), Florida Statutes (1977); 2) in committing the crimes, the petitioner knowingly created a great risk of death to many persons, Id. Section 921.141(5)(c); 3) the crimes were committed for the purposes of avoiding or preventing lawful arrest, Id. Section 921.141(5)(e); 4) the crimes were committed during the course of a robbery, Id. Section 921.141(5)(d); 5) the crimes were committed for pecuniary gain, Id. Section 921.141(5)(f); 6) the crimes were committed to disrupt law enforcement, Id. Section 921.141(5)(g); and that the crimes were especially henious, atrocious and cruel, Id. Section 921.141(5)(h). The trial judge found no mitigating circumstances. (App. 6).

On appeal, the Supreme Court of Florida found the evidence to be legally insufficient to sustain the trial court's finding that the petitioner knowingly created a great risk of death to many persons. (App. 7). The court struck that aggravating

circumstance. (App. 7).

The Supreme Court of Florida also found error in the trial court's separate consideration of aggravating circumstances that were based on the same aspect of the crime. (App. 7). Provence v. State, 337 So.2d 783 (Fla. 1976), cert. denied 431 U.S. 969 (1977). As such, the Supreme Court of Florida held that it was improper for the trial court to find that the murders were committed in the course of robberies and that they were committed for pecuniary gain. (App. 7). The same theory was held applicable to the trial court's improper reliance on its findings that the murders were committed to avoid or prevent a lawful arrest and that they were committed to disrupt or hinder the enforcement of the laws. (App. 7).

After reducng the number of properly found aggravating circumstances to four, the Supreme Court of Florida nevertheless upheld the petitioner's death sentence finding that consideration of the erroneous aggravating circumstances had not interfered with the weighing process since no mitigating circumstances had been found by the trial court. (App. 7). The Supreme Court of Florida's concluson necessarily involves a misinterpretation of Section 921.141 and the weighing process described therein; a process inherent in the "channeled discretion" possessed by trial judges and juries deemed essential to the constitutionality of Florida's death-sentencing scheme. Godfrey v. Georgia, U.S. ___, 100 S.Ct. 1759, 1764 (1980); Gregg v. Georgia, 428 U.S. 153, 199 (1976); Proffitt v. Florida, supra.

Section 921.141(2), Florida Statutes (1977), requires that a jury render an advisory sentence based upon a weighing and comparison of sufficient aggravating and mitigating circumstances. Notwithstanding the jury's recommendation, the trial court, pursuant to Section 921.141(3), Florida Statutes (1977), must weigh the aggravating and mitigating circumstances and determine the appropriate sentence. Brown v. Wainwright, 392 So.2d 1327 (Fla. 1981).

Two observations about the statutory weighing process are critical to the petitioner's constitutional claim and the

constitutionality of the process itself. First, the weighing process anticipates that reasoned judgment will be employed as to the weight to be given to an individual circumstance under a particular factual situation, rather than a mere counting process of 'X number of aggravating circumstances and Y number of mitigating circumstances. Dixon v. State, 283 So.2d 1, 10 (Fla. 1973). Second, the weighing process includes not just a comparison of aggravating and mitigating circumstances but a weighing of the aggravating circumstances themselves, in the absence of mitigating circumstances, to determine whether the death penalty is required for a particular individual. Alvord v. State, 322 So.2d 533 (Fla. 1975).

In Alvord v. State, supra, the Supreme Court of Florida recognized that a death sentence is not required, even where there are aggravating circumstances, and mitigating circumstances are absent:

> . . . The law does not require that capital punishment be imposed in every conviction in which a particular state of facts occur. The statute properly allows some discretion, but requires that this discretion be reasonable and controlled. No defendant can be sentenced to capital punishment unless the aggravating factors outweigh the mitigating factors. However, this does not mean that in every instance under a set state of facts the defendant must suffer capital punishment.
>
> The statute contemplates that the trial jury, the trial judge and this Court will exercise reasoned judgment as to what factual situations require the imposition of death and which factual situations can be satisfied by life imprisonment in light of the totality of the circumstances present in the evidence. Certain factual situations may warrant the infliction of capital punishment, but, nevertheless, would not prevent either the trial jury, the trial judge, or this Court from exercising reasoned judgment in reducing the sentence to life imprisonment. Such an exercise of mercy on behalf of the defendant in one case does not prevent the imposition of death by capital punishment in the other case.

Alvord v. State, 322 So.2d at 540.

In its opinion below, the Supreme Court of Florida usurped the role of the trial court by unilaterally reweighing the remaining aggravating circumstances and arriving at death as an

appropriate sentence. (App. 7). As such, the Supreme Court of Florida went beyond its function as a reviewing court; in this case, the state court of last resort was the sentencing court. The lack of mitigating circumstances in this case does not resolve the question regarding the propriety of death as penalty. Still to be answered by the trial court was whether the remaining, properly determined aggravating circumstances were sufficient to justify imposition of the death penalty under the factual circumstances of this case. Alvord v. State, 322 So.2d at 540. Instead, the Supreme Court of Florida erroneously took it upon itself to resolve that question by apparently assuming that the trial court would have placed sufficient weight on the remaining aggravating circumstances to justify the death penalty. (App. 7). The Supreme Court of Florida's arbitrary imposition of the death sentence in the instant case violates the petitioner's Eighth and Fourteenth Amendment rights.

In Stephens v. Zant, 631 F.2d 397 (5th Cir. 1980), cert. granted ____ U.S. ____, 102 S.Ct. 90 (1981), one of the several aggravating circumstances considered and found in the trial court was thereafter declared unconstitutional by the Supreme Court of Georgia. Id. at 405. The state court, "[a]fter eliminating that circumstances from consideration . . . found the evidence supported the jury's findings of the other statutory aggravating circumstance and held that the sentence was not impaired." Ibid. (citation omitted).

The Fifth Circuit found Stephens death sentence to be violative of the Eighth Amendment. The court noted, "[i]t is impossible for a reviewing court to determine satisfactorily that the verdict in this case was not decisively affected by an unconstitutional aggravating circumstance." Ibid. As a result, the court concluded that the process in which the death penalty was imposed was not "rationally reviewable," as required by the Eighth Amendment. Ibid. (citations omitted).

Subsequently, in Henry v. Wainwright, 661 F.2d 56 (5th Cir. 1981), the Fifth Circuit reached the same conclusion when a non-statutory aggravating circumstance had entered into the weighing

process in a Florida trial court. In Henry, respondent Wainwright argued that the improper consideration of non-statutory aggravating factors was harmless in view of the total absence of mitigating factors. The Fifth Circuit rejected that argument and, in noting that Henry's death sentence had been upheld in violation of the Eighth Amendment, stated:

> . . . Guarding against the arbitrary and discriminatory impositon of the death penalty must not become simply a guessing game played by a reviewing court in which it tries to discern whether the improper non-statutory aggravating factors exerted a decisive influence on the sentence determination. The guarantee against cruel and unusual punishment demands more.

Henry v. Wainwright, 661 F.2d at 59, 60.

As in Stephens v. Zant, supra and Henry v. Wainwright, supra, a number of improper or erroneous aggravating factors were considered in the weighing process conducted by the trial court in the case at bar. On appeal, the Supreme Court of Florida necessarily engaged in speculation in concluding that the excluded aggravating factors played no part in the trial court's determination that a death sentence was appropriate. The decisions in Stephens and Henry compel the conclusion that this type of speculative review is violative of the Eighth and Fourteenth Amendments. See, Godfrey v. Georgia, supra. Intervention by this Court is necessary to remedy the constitutional violation suffered by the petitioner and to resolve the conflict of decisions between the Fifth Circuit and the Supreme Court of Florida regarding this important constitutional question.

CONCLUSION

The significance of the questions presented in the instant petition is evident. The need for resolution of these questions as well as harmonization of the decisions of this Court, the federal courts of appeal and the Supreme Court of Florida is great. The Writ of Certiorari should issue.

Respectfully submitted,

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BY: Rory S. Stein
RORY S. STEIN
Assistant Public Defender

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. 81-6606

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SUPREME COURT, U.S.

MARVIN FRANCOIS,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

APPENDIX

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Marvin FRANCOIS, Appellant,

v.

STATE of Florida, Appellee.

No. 54461.

Supreme Court of Florida.

Oct. 15, 1981.

Rehearing Denied Jan. 28, 1982.

Defendant was convicted in the Circuit Court, Dade County, Richard S. Fuller, J., of six counts of first-degree murder, two counts of attempted first-degree murder, and three counts of robbery, and upon being sentenced to death, defendant appealed. The Supreme Court held that: (1) right to appeal denial of motions for discovery, for a hearing, and to dismiss indictment for reason of alleged systematic exclusion of persons of a particular race from grand jury was waived by defendant by failing to diligently pursue matter and by inducing trial court to rule against him when a favorable ruling would have resulted, possibly, in convening of a new grand jury and issuance of a new indictment or at least in a delay of trial for purposes of discovery or evidentiary hearing or both and (2) although trial court's sentencing errors resulted in recitation of three statutory aggravating circumstances that were not properly established by evidence, sentences of death were nevertheless warranted, where defendant, twice previously convicted of felonies which involved use or threat of violence, was convicted of six premeditated, execution style murders committed in course of committing robbery and for purpose of eliminating witnesses to crimes of robbery, murders were especially heinous, atrocious, and cruel, there were four statutory aggravating circumstances and there were no mitigating circumstances.

Affirmed.

Sundberg, C. J., dissented and filed opinion.

1. Homicide ⇐253(1), 256
Robbery ⇐24.1(1)

Evidence, including testimony of individuals who survived robberies and shootings which were fatal to six others, was sufficient to sustain convictions of six counts of first-degree murder, two counts of attempted first-degree murder, and three counts of robbery.

2. Criminal Law ⇐938(1)

A new trial based on assertion that testimony of alibi witness was newly discovered evidence and that State suppressed information concerning identity and whereabouts of witness was not warranted since, if anyone had known about witness and her possible value to defendant for alibi purposes, it would have been the defendant and, in any event, alleged alibi testimony would not have been probative because evidence showed that crimes were committed well before times with which alibi testimony was concerned.

3. Indictment and Information ⇐144

Rule providing that motion to dismiss must be made either before or upon arraignment unless court grants further time, rather than statute providing that a challenge or objection to grand jury may not be made after it has been empaneled and sworn, was applicable in case, and motion to dismiss, based on alleged systematic exclusion of persons of particular race from grand jury which returned indictment, was untimely where court granted defendant additional time in which to file his motion. West's F.S.A. § 905.05; 33 West's F.S.A. Rules of Criminal Procedure, Rule 3.190(c).

4. Criminal Law ⇐1026

Right to appeal denial of motions for discovery, for a hearing, and to dismiss indictment for reason of alleged systematic exclusion of persons of a particular race from grand jury was waived by defendant by failing to diligently pursue matter and by inducing trial court to rule against him when a favorable ruling would have resulted, possibly, in convening of a new grand jury and issuance of a new indictment or at least in a delay of trial for purposes of

discovery or evidentiary hearing or both. U.S.C.A.Const.Amend. 14.

5. Constitutional Law ⇐42.1(3)

Defendant had no standing to make argument that statute upon which life sentences were based arbitrarily established a presumption that death would be appropriate sentence in a felony-murder situation inasmuch as the evidence showed that the defendant was the actual perpetrator of five premeditated murders and that defendant was a first-degree principal in one other murder. West's F.S.A. §§ 921.141, 921.141(5)(b–h); U.S.C.A.Const.Amends. 5, 14; West's F.S.A.Const.Art. 1, § 9.

6. Homicide ⇐354

Finding that defendant had been previously convicted of violent felonies, which justified sentences of death on conviction of six counts of murder, was supported by sufficient evidence. West's F.S.A. §§ 921.141, 921.141(5)(b–h); U.S.C.A.Const. Amends. 5, 14; West's F.S.A.Const.Art. 1, § 9.

7. Criminal Law ⇐1177

A defendant must be allowed to present evidence pertaining to the degree of his or her involvement in and the circumstances of the events upon which a court imposes death sentences on basis of previous convictions of violent felonies, but this does not compel a conclusion that an act of the court in sustaining an objection to the presentation of such evidence requires vacation of the death sentence in each case. West's F.S.A. §§ 921.141, 921.141(5)(b–h); U.S.C.A.Const.Amends. 5, 14; West's F.S.A. Const.Art. 1, § 9.

8. Criminal Law ⇐1177

Refusal to allow inquiry into background of an aggravated assault conviction which was one of prior violent felonies used to justify sentences of death in case did not warrant vacation of those sentences where defendant made no proffer of his own of matters relating to gravity of his previous criminal activity. West's F.S.A. §§ 921.141, 921.141(5)(b–h); U.S.C.A.Const.Amends. 5, 14; West's F.S.A.Const.Art. 1, § 9.

9. Homicide ⇐354

Finding that capital felonies forming basis of sentences of death in case were especially heinous, atrocious, or cruel could be sustained on basis of mental anguish inflicted on victims as they waited for their "executions" to be carried out. West's F.S.A. §§ 921.141, 921.141(5)(b–h); U.S.C.A. Const.Amends. 5, 14; West's F.S.A.Const. Art. 1, § 9.

10. Homicide ⇐354

Trial court erred in finding that, in committing capital felonies forming basis of sentences of death, defendant knowingly created a great risk of death to many persons was error inasmuch as finding was based on mere speculation that any others who approached house would have been killed. West's F.S.A. §§ 921.141, 921.141(5)(b–h); U.S.C.A.Const.Amends. 5, 14; West's F.S.A.Const.Art. 1, § 9.

11. Homicide ⇐354

In sentencing defendant to death after finding that defendant had been previously convicted of violent felonies, trial court erred by separately considering facts that murders were committed in course of robberies and that they were committed for pecuniary gain; separate consideration of factors that were essentially based on same aspect of crimes was error. West's F.S.A. §§ 921.141, 921.141(5)(b–h); U.S.C.A.Const. Amends. 5, 14; West's F.S.A.Const.Art. 1, § 9.

12. Homicide ⇐354

Principal against double consideration of a single factor in aggravation was violated by sentencing judge in finding that murders were committed to avoid or prevent a lawful arrest and that they were committed to disrupt or hinder enforcement of the laws. West's F.S.A. §§ 921.141, 921.141(5)(b–h); U.S.C.A.Const.Amends. 5, 14; West's F.S.A.Const.Art. 1, § 9.

13. Criminal Law ⇐996(1.1)

Where the consideration of erroneous aggravating circumstances does not interfere with the weighing process prescribed by statute because there are no mitigating

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14. Homicide ⇐354

Although trial court's sentencing errors resulted in recitation of three statutory aggravating circumstances that were not properly established by evidence, sentences of death were nevertheless warranted, where defendant, twice previously convicted of felonies involving use or threat of violence, was convicted of six premeditated, execution-style murders committed in course of committing robbery and for purpose of eliminating witnesses to crimes of robbery, murders were especially heinous, atrocious, and cruel, there were four statutory aggravating circumstances and there were no mitigating circumstances. West's F.S.A. §§ 921.141, 921.141(5)(b-h); U.S.C.A.Const.Amends. 5, 14; West's F.S.A.Const.Art. 1, § 9.

Bennett H. Brummer, Public Defender, and Warren S. Schwartz, Asst. Public Defender, Miami, for appellant.

Jim Smith, Atty. Gen., and Calvin L. Fox, Asst. Atty. Gen., Miami, for appellee.

PER CURIAM.

This cause is before the Court on appeal of a judgment of the Circuit Court of the Eleventh Judicial Circuit, Dade County, which adjudicated the appellant guilty of six counts of murder in the first degree, along with additional crimes, pursuant to which six sentences of death were imposed upon him. This Court has jurisdiction of his appeal. Art. V, § 3(b)(1), Fla.Const.

The appellant was convicted on six counts of first-degree murder, two counts of attempted first-degree murder, and three counts of robbery. The evidence showed that in the early evening of July 27, 1977, John Errol Ferguson gained admittance to the home of Livingston Stocker in the Carol City section of Miami by posing as a power company employee. Margaret Wooden was present in the home at the time. After entering, Ferguson bound Wooden's hands and blindfolded her. Then he admitted Beauford White and the appellant Marvin Francois. The three men searched the house for valuables, taking some firearms and some of Margaret Wooden's jewelry. Then the three men covered their faces with masks.

Shortly thereafter Livingston Stocker arrived home with five friends—Henry Clayton, Johnny Hall, Randolph Holmes, Charles Stinson, and Gilbert Williams. The intruders tied the six men up and took their valuables. Still later Michael Miller, Livingston Stocker's nephew, arrived at the house. He too was tied up and robbed.

The appellant's mask then slipped off and he declared that all the victims would have to be killed. Ferguson took Margaret Wooden and Michael Miller into a bedroom and shot them both in the head with a pistol. Appellant Francois took the other six victims into another bedroom, made them lie down on the floor, and shot them each in the head with a shotgun.

After the three attackers departed, Margaret Wooden ran to a neighbor's house to call for help. When the police arrived they found Johnny Hall crawling toward the back door of the house. Both Wooden and Hall survived and testified at trial. The other six victims died. At trial, Johnny Hall identified the appellant as the man who shot him and five others with a shotgun. Theresa Rolle testified that Francois admitted to her his participation in the murders.

Adolpus Archie testified that he took Francois, Ferguson, and White to Stocker's home in his car and waited for them down the street. He testified further that it was unnecessary for him to pick the other three up and drive them away since they departed the scene in Stocker's car. Archie met the other three later and assisted in disposing of evidence. He testified that appellant Francois told him that the real purpose of the venture was not robbery but murder. Francois stated further, according to Archie's testimony, that he and Ferguson had

done the shooting. Archie pled guilty to second-degree murder and received a sentence of twenty years imprisonment.

Prior to trial, appellant moved to dismiss the indictment on the ground that it was issued by a grand jury selected under a procedure that systematically excludes minorities from participation. He moved also for an evidentiary hearing on the motion, and for discovery of the master list from which grand jurors are drawn.

[1] Appellant, in essence, presents three issues on appeal of the judgments of conviction. He contends first that the evidence presented at trial was insufficient to support the judgments of conviction. We find, however, that the judgments were rendered pursuant to jury verdicts that were based on competent, substantial evidence. Appellant's first argument is without merit.

[2] Secondly, appellant argues that he should have been granted a new trial because of newly discovered evidence and because the evidence in question was known to the state at the time of trial but not disclosed to him. Appellant's motion for new trial alleged that shortly before sentencing a woman named Sheila Walker approached defense counsel and said that appellant was with her at 11:00 p.m. on the night of the murders. The motion asserted that this was newly discovered evidence and that the state had suppressed information concerning the identity and whereabouts of this witness. If anyone had known about this witness and her possible value to the accused for alibi purposes, however, it would have been the defendant. Furthermore, the evidence showed that the murders were committed well before 11:00 p.m., so the testimony it was alleged the witness would give would not have been probative and would not have changed the outcome. *See United States v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976); *Thomas v. State*, 374 So.2d 508 (Fla.1979), *cert. denied*, 445 U.S. 972, 100 S.Ct. 1666, 64 L.Ed.2d 249 (1980). Therefore, appellant's contentions on this issue are without merit.

Thirdly, appellant contends that the judgments must be reversed because to try a defendant under an indictment returned by a grand jury from which persons of a particular race have been systematically excluded denies equal protection of the law. Appellant's motion to dismiss alleged that there had been for a number of years a substantial disparity between the percentage of blacks and Hispanics in Dade County's eligible population and the percentage serving on grand juries. He contends that in order for him to have made out a prima facie case of discriminatory selection, which would have required a showing of justification from the state, he needed to have access to the grand jury master list and also should have been afforded an evidentiary hearing.

[3] Appellant argues that his affidavits and proffered exhibits demonstrated a disparity that was unlikely to be due to chance, thus entitling him to discovery of the master list and an evidentiary hearing. *See Castanda v. Partida*, 430 U.S. 482, 97 S.Ct. 1272, 51 L.Ed.2d 498 (1977); *Dykman v. State*, 294 So.2d 633 (Fla.1974); *Rojas v. State*, 288 So.2d 234 (Fla.1973); *Seay v. State*, 286 So.2d 532 (Fla.1973), *cert. denied*, 419 U.S. 847, 95 S.Ct. 84, 42 L.Ed.2d 77 (1974). In response the state argues that the appellant waived his right to raise this issue by not timely filing his motion. The state refers us to section 905.05, Florida Statutes (1977), which provides:

> A challenge or objection to the grand jury may not be made after it has been empaneled and sworn. This section shall not apply to a person who did not know or have reasonable ground to believe, at the time the grand jury was empaneled and sworn, that cases in which he was or might be involved would be investigated by the grand jury.

We find that this statute does not apply to the instant case. Rather, we conclude that the time limit for the filing of the motion to dismiss was governed by Florida Rule of Criminal Procedure 3.190(c), which provides that a motion to dismiss is to be made either before or upon arraignment unless

the court grants further time. The motion here was timely filed because the court granted the appellant additional time in which to file his motion.

[4] Although we find that the motion was timely filed, we hold that appellant waived his right to appeal the denial of his motions for discovery, for a hearing, and to dismiss the indictment, by failing to diligently pursue the matter and by inducing the trial court to rule against him. The record shows that appellant's motion came up for consideration at a pre-trial hearing held January 3, 1978, at which other motions were argued. At that hearing appellant's counsel stated:

> The only other motion that I filed is the motion to dismiss the Grand Jury indictment based on the Blue Ribbon Grand Jury and requesting an evidentiary hearing on that point, but it—I am going to forego any arguments on that. In fact, I am not going to ask for a hearing on it until a later date simply because I do not think there is any way I can get this case to trial by next week.

Transcript of Proceedings, vol. I, at 12–13. Further pre-trial hearings were held on February 21 and 23, 1978, and again the matter was not brought up by defense counsel. On February 27 defense counsel declared that he was ready for trial. However, the trial was not finally scheduled to begin until April 17. On that day defense counsel, Mr. Diamond, brought the motion to dismiss to the court's attention and the following exchange ensued:

> MR. DIAMOND: Your Honor, just before we start on the motion to suppress, I am not sure what pretrial motions have at this point been granted and have not, because of the fact that we have three defendants. Now there are four. Well, four defendants have been charged throughout.
>
> There were motions to adopt based on all motions previously filed. I filed a motion to dismiss the grand jury indictment in this case originally. I believe it was dismissed—I mean, it was not dismissed by this Court. It was dismissed in other courts with regard to these defendants. This Court did not dismiss the indictments against them.
>
> THE COURT: That is true. I find the grand jury was legally constituted, and I deny the motions.
>
> MR. DIAMOND: Fine.

Transcript of Proceedings, vol. I, at 40.

This exchange reveals that defense counsel practically invited the court to rule against him. A favorable ruling on the motion would have resulted, possibly, in the convening of a new grand jury and the issuance of a new indictment, or at least in a delay of the trial for purposes of discovery or an evidentiary hearing or both. Yet the record also reveals that appellant and his counsel did not press for a pretrial ruling because they did not want to delay the trial. The defense tactic was to delay the deciding of the claim of grand jury illegality until just before trial, in hopes of upsetting the conviction on appeal. *See Francis v. Henderson*, 425 U.S. 536, 96 S.Ct. 1708, 48 L.Ed.2d 149 (1976); *Davis v. United States*, 411 U.S. 233, 93 S.Ct. 1577, 36 L.Ed.2d 216 (1973). We cannot condone such tactics and therefore refuse to consider this issue on appeal.

Finding no merit in any of appellant's challenges to the convictions, we affirm them.

We come now to consideration of the sentencing proceeding and sentences of death. Appellant presents a series of arguments with regard thereto.

[5] Appellant argues that section 921.141, Florida Statutes (1977), violates due process by arbitrarily establishing a presumption that death is the appropriate sentence in a felony murder situation, because the existence of the underlying felony can be used to aggravate the capital felony. Appellant has no standing to make this argument since the evidence shows that he was the actual perpetrator of five premeditated murders and was a first-degree principal in one other murder. Moreover, we recently rejected this argument when it was presented by an appellant who has

standing to raise it. *White v. State*, 403 So.2d 331 (Fla.1981).

The judge found that appellant had twice previously been convicted of a violent felony, section 921.141(5)(b), Florida Statutes (1977); that in committing the crimes appellant knowingly created a great risk of death to many persons, *Id.* § 921.141(5)(c); that the crime was committed for the purposes of avoiding or preventing lawful arrest and disrupting law enforcement, *Id.* § 921.145(5)(e) & (g); that the crimes were committed during the course of a robbery and for pecuniary gain, *Id.* § 921.141(5)(d) & (f); and that the capital felonies were especially heinous, atrocious, and cruel. *Id.* § 921.141(5)(h). The judge also found that there were no mitigating circumstances.

[6] Appellant contends that the finding that he had been previously convicted of violent felonies was not supported by sufficient evidence. At the sentencing hearing the state called as a witness a court clerk who brought along court files from two prior criminal prosecutions of a person named Marvin Francois. Copies of documents from those files—a judgment of conviction for robbery and a judgment of conviction for aggravated battery and possession of a firearm during a criminal offense—were admitted into evidence. Appellant claims that these documents were an insufficient basis upon which to conclude that he had the prior convictions. He argues that the state should have been required to do more in order to prove beyond a reasonable doubt that he was the same Marvin Francois named in the documents. We disagree and hold that the copies of judgments of conviction for violent felonies naming Marvin Francois as the convicted defendant constituted sufficient proof of the aggravating factor. Appellant could have rebutted the information or challenged the accuracy of the documents had he chosen to try to do so.

In further carrying its burden of showing this aggravating circumstance, the state presented the testimony of the assistant state attorney who had prosecuted appellant on his aggravated assault charge. On cross-examination, defense counsel asked the witness whether the judgment was based upon a negotiated plea with a sentence of probation. The court sustained the state's objection to this inquiry, reasoning that the judgment of conviction spoke for itself in establishing the factor of previous conviction of a violent felony.

[7, 8] Appellant argues that the court erred in not allowing inquiry into the background of the aggravated assault conviction. In *Elledge v. State*, 346 So.2d 998 (Fla.1977), the state at the sentencing hearing called as a witness the relative of the victim of a murder, other than the one for which the defendant was being tried, to testify about the details of the other murder. This Court held that this was appropriate "because we believe the purpose for considering aggravating and mitigating circumstances is to engage in a character analysis of the defendant to ascertain whether the ultimate penalty is called for in his or her particular case." *Id.* at 1001. Conversely, a defendant must be allowed to present evidence pertaining to the degree of his or her involvement in and the circumstances of the events upon which previous convictions are based. This principle does not compel the conclusion, however, that the court's sustaining the objection requires vacation of the death sentence. The defense made no proffer of its own of matters relating to the gravity of appellant's previous criminal activity. The defendant was of course perfectly free to do so. It would be a different case if the court had excluded evidence proffered by the defendant rebutting the state's evidence of aggravation or relative to any matter in mitigation. *See Lockett v. Ohio*, 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978); *Miller v. State*, 332 So.2d 65 (Fla.1976).

[9] The appellant argues that the trial court erred in finding that the capital felonies were especially heinous, atrocious, or cruel. We hold that the finding can be sustained on the basis of the mental anguish inflicted on the victims as they waited for their "executions" to be carried out. *White v. State*, 403 So.2d 331, No. 54,292 (Fla.1981).

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[10] The appellant also argues that the trial court erred in finding that in committing the capital felonies, the appellant knowingly created a great risk of death to many persons. We agree that this finding was error. There were six separate homicides, but the court's conclusion that many other persons were endangered was based on the speculation that any others who approached the house would have been killed. The existence of aggravating circumstances may not be established by speculation. *White v. State*, 403 So.2d 331, (Fla.1981).

[11] The appellant argues further that the trial court erred by separately considering the facts that the murders were committed in the course of robberies and that they were committed for pecuniary gain. Separate consideration of factors that are essentially based on the same aspect of the crimes is error. *White v. State; Provence v. State*, 337 So.2d 783 (Fla.1976), *cert. denied*, 431 U.S. 969, 97 S.Ct. 2929, 53 L.Ed.2d 1065 (1977). By finding both statutory aggravating circumstances, the trial court committed such error.

[12] Appellant makes the same kind of "doubling up" argument with respect to the trial court's findings that the murders were committed to avoid or prevent a lawful arrest and that they were committed to disrupt or hinder the enforcement of the laws. Again, we find merit to appellant's argument and hold that the principle against double consideration of a single factor in aggravation was violated by the sentencing judge. *White v. State; Provence v. State*.

[13] Although the trial court's sentencing errors resulted in the recitation of three statutory aggravating circumstances that were not properly established by the evidence, we find that the sentences of death should still be upheld. Where the consideration of erroneous aggravating circumstances does not interfere with the weighing process prescribed by statute because there are no mitigating circumstances to weigh, no resentencing is required. *See Hargrave v. State*, 366 So.2d 1 (Fla.1978), *cert. denied*, 444 U.S. 919, 100 S.Ct. 239, 62 L.Ed.2d 176 (1979); *Elledge v. State*, 346 So.2d 998 (Fla.1977).

[14] The appellant, having been twice previously convicted of felonies involving the use or threat of violence, was convicted of six premeditated, execution-style murders committed in the course of committing robbery, and for the purpose of eliminating the witnesses to his crimes of robbery. The murders were especially heinous, atrocious, and cruel. There were four statutory aggravating circumstances. There were no mitigating circumstances. The jury recommended death. We affirm the judgments of conviction and the sentences of death.

It is so ordered.

ADKINS, BOYD, OVERTON, ALDERMAN and McDONALD, JJ., concur.

SUNDBERG, C.J., dissents with an opinion.

SUNDBERG, Chief Justice, dissenting.

I dissent from the majority's refusal to consider the issue of systematic racial underrepresentation on Dade County grand juries. The majority asserts that defense counsel "practically invited the court to rule against him" on the grand jury issue in order to secure a reversal of the conviction on appeal. That is a heady accusation which, to my mind, is unsubstantiated in the record.

On January 3, 1978, counsel for appellant filed a motion to dismiss the indictment and request for evidentiary hearing on the grand jury issue. The motion was accompanied by an impressive array of over seventy pages of affidavits and supporting data. If the record reveals anything, it reveals that appellant wanted to defer consideration of the grand jury claim simply in order to prepare adequately for that and the other numerous issues in this complex trial. When the motion came up for argument (timely, as the majority notes), the court denied it out of hand, without benefit of evidentiary hearing. The trial judge did not find the claim to have been waived, but rather specifically denied it on the merits.

At that point counsel could do no more to assert his claim.

Because I believe appellant proffered material facts to establish a prima facie claim of an illegally composed grand jury, he had a constitutional right to an evidentiary hearing on that issue. *Coleman v. Alabama*, 377 U.S. 129, 84 S.Ct. 1152, 12 L.Ed.2d 190 (1964); *Dykman v. State*, 294 So.2d 633 (Fla.1973). The majority denies appellant that right because, on the most sparse of records, it perceives that counsel invited that court error. I would not be so quick to impute perfidious motives to defense counsel.

Mark MIKENAS, Appellant,

v.

STATE of Florida, Appellee.

No. 49928.

Supreme Court of Florida.

Nov. 5, 1981.

Rehearing Denied Jan. 28, 1982.

On remand for resentencing following affirmance of defendant's first-degree murder conviction, 367 So.2d 606, the Circuit Court, Hillsborough County, J. C. Cheatwood, J., sentenced defendant to death, and he appealed. The Supreme Court, Adkins, J., held that trial court did not err by refusing to impanel advisory jury, by failing to consider testimony of psychologists and minister concerning defendant's rehabilitation, or by failing to strike all or part of presentence investigation report.

Affirmed.

1. Criminal Law ⇐1192

In imposing death sentence for felony-murder, after remand, trial court did not err by refusing to impanel advisory jury where order of remand did not require further jury deliberations, and where error in court's considering defendant's substantial criminal history as aggravating circumstance instead of as counter to allegation of lack of significant past criminal history as mitigating circumstance was to be corrected by court rather than jury.

2. Criminal Law ⇐1192

In imposing death sentence for felony-murder, following remand, trial court did not err in failing to consider testimony of psychologists and minister relating to defendant's rehabilitation where trial court was not required to give weight to such testimony as mitigating circumstances and defendant had been afforded ample opportunity to present evidence in mitigation in original sentencing proceeding.

3. Criminal Law ⇐986.2(1)

In imposing death sentence for robbery-murder, trial court did not err in stating in its finding concerning aggravating circumstances that pecuniary gain circumstance would be considered in conjunction with robbery circumstance where only robbery circumstance was found to be aggravating circumstance.

4. Criminal Law ⇐986.4(1)

In imposing death sentence for felony-murder, trial court did not err in failing to strike all or part of presentence investigation report where defendant was provided opportunity to rebut and trial court was entitled to draw its own conclusion in capital cases from information in report. West's F.S.A. Rules Crim.Proc., Rule 3.710.

Judge C. Luckey, Jr., Public Defender for the Thirteenth Judicial Circuit, Bruce P. Cury, Chief Asst. Public Defender, Tampa, and Jerry Hill, Public Defender for the Tenth Judicial Circuit, Bartow, for appellant.

Jim Smith, Atty. Gen. and Eula Tuttle Mason, Asst. Atty. Gen., Tampa, for appellee.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO: 77-28650 (Fuller)

THE STATE OF FLORIDA,

Plaintiff,

vs.

MARVIN FRANCOIS,

Defendant.

MOTION TO DISMISS THE INDICTMENT BASED UPON THE ILLEGAL COMPOSITION OF THE GRAND JURY; FOR AN EVIDENTIARY HEARING; AND FOR THE DISCOVERY OF CERTAIN MATTERS RELATING TO GRAND JURY COMPOSITION

COMES NOW the Defendant, MARVIN FRANCOIS, by and through his undersigned attorney, pursuant to RCrP 3.190, and moves this Honorable Court to:

1) Dismiss the Indictment.

2) Hold an Evidentiary Hearing to determine the legality of the Grand Jury composition and the selection procedure utilized for such composition.

3) Order discovery of the following matters:

(a) The names, addresses and voter registration numbers of all persons on each Grand Jury Master List since and including 1973.

(b) All documents in the possession of the Clerk of the Circuit Court and/or the Grand Jury Commission describing the system used in selecting each Grand Jury Master List down through the selection of the actual Grand Jury, including a sample of any form questionnaires or affidavits utilized to interview or screen potential Grand Jurors. The documents should include any documents describing the reduction of prospective Grand Jurors (1) from those on the voter registration list to the Grand Jury Master List of 500 and (2) from the Grand Jury Master List to the actual Grand Jury. All documents describing the process utilized for all judicial nominations and all

documents setting forth the names of all persons who at any stage in the selection process were nominated by judges should also be included. The above requested discovery should be made in camera and with such safeguards as the Court deems just.

The grounds for this Motion are as follows:

(a) The Grand Jury is illegally constituted as being in violation of the Defendant's rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and Article I, Sections 2, 9 and 15 of the Constitution of the State of Florida. Said Grand Jury is illegally constituted based upon the following reasons:

1) There is currently a marked disparity between the percentages of persons of African and Latin American descent qualified to serve, and the percentages of such persons actually on the Grand Jury Master List of five hundred names from which the Grand Jury was selected.

2) There has been the same marked disparities between the percentages of persons of African or Latin American descent qualified to serve and the corresponding percentages actually on the Grand Jury Master List of five hundred names for each year shown, i.e., 1973 through 1977.

3) The Grand Jury selection procedures set forth in Chapter 57-550 as amended by Chapter 70-1000, Laws of Florida perm and in fact necessitate, the racial identification of potential juro during the selection of the Grand Jury list. The procedures inherently encourage the Jury Commissioners to select potential Grand Jurors on the basis of personal friendship or acquaintanceship.

4) The Grand Jury selection procedures are designed to and result in Grand Jury lists which under-represent pers

of African and Latin American descent and other cognizable classes. The procedures seem to guarantee that even those few members of these classes who may appear on the lists are not fair representatives of the classes involved.

(b) An Evidentiary Hearing is necessary to present evidence to establish the above allegations beyond any doubt. The evidence that will be presented is outlined in the Offer of Proof.

(c) The sought after discovery is essential to the proof of the above allegations and without such discovery a fair and full hearing on the Constitutional issues cannot be had.

OFFER OF PROOF

I. Statistical Evidence of Disparities.

The Defendant will show by comparing the following percentages of persons of African or Latin American descent:

(a) percentage of population of Dade County (Source: Dept., of Commerce Census Bureau figures)

(b) percentage of registered voters (1973 - 1977) (Source: Dade County Department of Elections)

(c) percentage of Grand Jury Master Lists (1973 - 1977) (Source: the names, addresses and voter registration numbers of the people constituting the lists are in the possession of the Grand Jury Commission and the Clerk of the Circuit Court. After this information is obtained the required demographic data will then be obtained from the Dade County Department of Elections or via a questionnaire)

(d) percentage of Grand Jurors (1973 - 1977)

(Source: The names and addresses of actual Grand Jurors were obtained from the Clerk of the Circuit Court. The corresponding demographic data was obtained from the Dade County Department of Elections)

The attached chart, Racial Composition of Dade County Grand Jurys (Exhibit A) is based on data obtained from the Clerk of the Circuit Court and the Dade County Dept., of Elections and the Cencus Bureau. The chart indicates a marked disparity between the percentages of African or Latin American descent who actually served on Grand Jurys. The exact percentages of persons of African or Latin American descent on the Grand Jury Master Lists cannot be exactly ascertained until the sought after discovery is obtained; these percentages can, however, be estimated with a high degree of statistical accuracy. There is a marked disparity between these estimated percentages and the corresponding registered voter and general population percentages.

The manner in which the chart was prepared and the interpretation of the figures therein is set forth in the attached affidavits of Mr. Joseph Kelinson, Dr. S. Shapiro and Dr. Neumann. (Exhibits B, C and D.)

II. Evidence of Existence of Cognizable Classes.

Persons of African and Latin American descent tend to differ from Non-Latin Whites in both attitudinal and demographic variables and their adequate representation on the Grand Jury would make a real difference in the performance of the Grand Jury.

The following examples of demographic differences are taken from Profile of the Latin Population in the Metropolitan Dade County Area. Office of the County Manager, Fall 1976 which is here' incorporated into this Motion as Exhibit E.

Socio - Economic Status

	Black	Spanish Speaking	Non-Latin Whites
Median Family Income:	$ 5,983	$ 8,091	$ 10,563
Percent of Families below Poverty:	27.7%	13.8%	6.8%
Median School Years Attained (population 25+):	9.4	10.4	12.2
Percent Overcrowded Housing (1.01 persons plus per room):	33.1	32.6	5.2

Overcrowded Housing

Housing Unit Occupancy

Persons per room:	Black	Latin	Other
1.01 to 1.50:	15.4%	14.4%	3.0%
1.51 and over:	17.7	18.2	2.2
Total Overcrowded	13.1%	32.6%	5.2%

Income Sources

Per Capita Income

	Blacks	Latins	Non-Latin Whites
Wages and Salaries:	$ 1,481	$ 2,107	$ 2,998
Non-Farm Self-Employment:	59	162	379
Farm Self-Employment:	3	7	8
Social Security & Retirement:	47	32	205
Public Assistance:	32	35	8
All Other:	57	96	715
TOTAL Median Earned Income:	$ 1,678	$ 2,439	$ 4,314

Persons per Household

	Persons per Household	**Persons per Family**
Latin:	3.61	3.80
Black:	3.73	4.27
Non-Latin Whites:	2.57	3.08

Sub-Families:

Census data on "sub-families" gives us some idea of the extent which Latins have taken others into their homes for economic, or other reasons A "sub-family" is one which is related to the head of the primary family living in a residence.

	Husband-Wife Sub-families as a percent of husband-wife total families
Latin:	7.2%
Black	2.5%
Non-Latin Whites	1.7%

Percentage of Distribution of Workers by Industry

Male	Latin	Black	Non-Latin
Agriculture:	1.8%	5.9%	1.5%
Mining:	0.2	0.2	0.2
Construction:	8.6	16.9	10.4
Manufacturing:			
Durable:	15.0	4.9	5.6
Non-Durable:	11.0	4.2	4.8
Transportation:	8.2	15.7	15.5
Wholesale and Retail Trade:	26.8	22.7	23.9
Finance, Insurance & Real Estate:	3.7	2.7	7.3
Business & Repair Services:	5.8	4.4	5.7
Personal Services:	8.2	6.8	4.4
Entertainment & Recretational Services:	1.4	1.3	1.9
Professional & Related Services:	7.7	9.5	11.8
Public Administration:	1.6	4.8	7.0
	100%	100%	100%

Female			
Agriculture	0.8%	3.5%	0.7%
Mining:	0.1	-	-
Construction:	0.6	0.5	1.5
Manufacturing:			
Durable:	7.4	1.8	3.2
Non-Durable:	32.6	3.9	4.4
Transportation:	3.8	3.9	9.4
Wholesale & Retail Trade:	19.0	13.1	26.5
Finance, Insurance & Real Estate:	6.0	2.6	10.0
Business & Repair Services:	3.1	1.5	3.4
Personal Services:	11.8	6.8	4.4
Entertainment & Recretational Services:	0.5	0.7	1.5
Professional & Related Services:	13.2	30.6	28.6
Public Administration:	1.1	2.8	3.7
	100%	100%	100%

Occupations by Ethnicity and Sex - 1

	Latin	Black	Non-Lat Whites
Professional & Technical:	9.8%	4.8%	17.1%
Managers & Administrators:	8.5	3.1	14.5
Sales:	7.8	2.0	11.9
Clerical:	9.4	5.6	9.1
Operatives (including transportation):	20.7	23.4	9.0
Other Blue Collar:	29.1	41.1	27.1
Farm Workers:	1.0	2.6	0.4
Service Workers (except private household):	13.4	29.0	14.6
Private Household Workers:	2.0	26.6	1.1
TOTAL:	100%	100%	100%

Occupations by Ethnicity and Sex - 197

	Latin	Black	Non-Latin Whites
Female			
Professional & Technical:	6.5%	8.7%	16.9%
Managers & Administrators	1.8	1.0	5.5
Sales:	5.7	2.5	9.6
Clerical	27.7	16.9	44.4
Operatives:			
(including transportation):	38.1	10.2	5.3
Other Blue Collar	4.2	2.5	2.2
Farm Workers:	0.6	2.6	0.4
Service Workers:			
(except private household)	13.4	29.0	14.6
Private Household Workers:	2.0	26.6	1.1
TOTAL	100%	100%	100%

III Grand Jury Selection Procedures.

Chapter 57-500 as amended by Chapter 70-1000 Laws of Florida provides that the Circuit Judges for Dade County shall devise the Grand Jury Master List as prepared as follows: Each judge is asked to submit the names and addresses of a number of person with whom he is acquainted and who meet the statutory requirements for jury service. A list of five hundred such names is collected and the names are placed in the Grand Jury Box. The judge in charge of the Grand Jury draws from the Grand Jury Box a sufficient number of names to constitute the Grand Jury.

Throughout the period 1973 - 1977 and prior to that time there were no Circuit Court Judges of African or Latin American descent in Dade County. At the present time, out of 46 Circuit Judges there is only one Circuit Judge of African descent and none of the Latin American descent.

As more fully set forth in the attached Affidavit of Mr. Joseph Kelinson (Exhibit B) and the attached chart Demographic Characteristics of Census Tracts of Circuit Court Judges (Exhibit E) the Circuit Court Judges tend to reside in census tracts where there is

a low percentage of persons of African or Latin American descent. Judges like all other people tend to reside in neighborhoods consisting of residents of the same race and socio-economic status.

What becomes painfully apparent is the fact that there is a vast source of discord with regard to the lack of a fair cross-section representation of the citizens of Dade County to serve as members of the Grand Jury.

The Dade County Community Relations Board has conducted numerous hearings and has done considerable research on this precise issue or complaint. In December, 1976, the Dade County Community Relations Board undertook discussion of the problem: "Is the Grand Jury composition an unfair representation of the community?" (See Exhibit F).

Again, in January, 1977, the Dade County Community Relations Board had discussion on "The selection process for the Grand Jury: Part II". (See Exhibit G).

In March, 1977, after full hearings and discussions, wherein numerous prominent and learned individuals were invited and, in fact, did speak, the Dade County Community Relations Board published its Special Report No. FY-77-3, with its findings and recommendations. The Report speaks for itself with regard to its findings of disproportionate and gross lacking of representation of identifiable minority groups (See Exhibit H).

In addition thereto, see Exhibit I, which is a City of Miami Resolution, which was adopted to "urge the Grand Jury Commission to take steps which would insure greater participation on the Grand Jury by our black and Latin citizens".

It is, therefore, respectfully submitted that the problem complained of as enumerated in this motion is one of wide concern and applicability, and counsel most respectfully feels and requests that

this most Honorable tribunal consider all of the aforementioned allegations, pleadings, affidavits, exhibits and proof to determine this most justifiable issue.

WHEREFORE, it is respectfully submitted that a prima facie case of discrimination has been presented and it is prayed that the Court would dismiss the Indictment or, in the alternative, hold an Evidentiary Hearing and order disclosure of the sought after discovery, and require the State to now offer credible, sufficient evidence to overcome and rebut this prima facie case as established.

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail/hand to the office of RICHARD E. GERSTEIN, State Attorney, 1351 Northwest 12th Street, Miami, Florida, 33125, this 7 day of January, 1971.

Respectfully submitted,

NATHAN P. DIAMOND, ESQUIRE, of
PENZELL & DIAMOND, P.A.,
Douglas Center, Suite 602,
2600 Southwest 37th Avenue,
Coral Gables, Florida, 33134
Telephone: 448-4496

AFFIDAVIT OF NATHAN DIAMOND

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

BEFORE ME the undersigned authority did personally appear NATHAN DIAMOND who after bein duly sworn upon oath deposes and says:

1. I am a member of the Florida Bar and served as trial counsel for and on behalf of Marvin Francois in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, Criminal Division, in the case of State of Florida, Plaintiff, vs. Marvin Francois, Defendant, Case No. 77-28650.

2. On January 3, 1978 I filed, on behalf of Defendant, Marvin Francois, a motion designated "Motion to Dismiss the Indictment Based Upon the Illegal Composition of the Grand Jury; for an Evidentiary Hearing; and for the Discovery of Certain Matters Relating to Grand Jury Composition".

Attached to said motion were nine exhibits, identified as Exhibits "A thru I". Said exhibits were filed contemporaneously with, and were referred to, in the said motion. A true and correct copy of said exhibits, as filed with the Clerk of the Circuit Court are attached hereto.

FURTHER AFFIANT sayeth not.

NATHAN DIAMOND

Sworn and subscribed before me this 1 day of December 1978

Notary Public
State of Florida at Large

My commission expires:

RACIAL COMPOSITION OF DADE COUNTY GRAND JURY

YEAR	GENERAL POPULATION		REGISTERED VOTERS		GRAND JURY [illegible]		ACTUAL GRAND JURY		DISPARITY BETWEEN REG. VOTERS & GRAND JURY			
	BB	BL	BB	BL	BB	BL	BB	BL	BD	BL	BB	BL
1970	15.2	23.6										
1973 (spring)			13.0%	EST 8.0	(EST)	(EST)						
1973 (fall)			13.0%	EST 8.0	4.0%	3.0%	0%	4.3%			100.0%	45.6%
1974 (spring)			13.5%	EST 8.0	4.0%	3.0%	4.3%	4.3%			67.8%	45.6%
1974 (fall)			13.5%	EST 8.0	4.0%	3.0%	0%	4.3%			100.0%	45.6%
1975 (spring)			14.1%	8.9%	4.0%	3.0%	0%	4.3%			100.0%	51.2%
1975 (fall)			14.1%	8.9%	4.0%	3.0%	4.3%	0%			51.2%	100%
1976 (spring)			13.8%	10.2%	4.0%	3.0%	8.7%	0%			37.0%	100%
1976 (fall)			13.8%	10.2%	4.0%	3.0%	4.3%	0%			68.5%	100%
1977 (spring)			15.2%	12.6%	4.0%	3.0%	13.0%	0%			14.5%	100%
1980	(EST) 14.5	(EST) 38.3										

AVERAGE UNDERREPRESENTATION OF PERSONS OF AFRICAN DESCENT = 67.4%

AVERAGE UNDERREPRESENTATION OF PERSONS OF LATIN AMERICAN DESCENT = 73.5%

EXHIBIT "A"

THE STATE OF FLORIDA,	:	IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
Plaintiff,	:	CRIMINAL DIVISION
-vs-	:	CASE NO. 77- (Judge Baker) 25171 (A)
RICHARD HENRY MARLOWE,	:	AFFIDAVIT OF JOSEPH H. KELINSON
Defendant.	:	

STATE OF FLORIDA)

COUNTY OF DADE)

I, JOSEPH H. KELINSON, am an attorney in the offices of Mechanic & Goldstein. I gathered together the data on which Exhibit "A" is based. I obtained copies of the 1973-1977 Grand Juries from the Office of the Clerk of the Circuit Court.

I obtained the voter registration statistics from the office of the Dade County Board of Elections at 1400 Biscayne Boulevard.

I obtained information concerning the racial composition of the 1973-1977 Grand Juries from the Office of the Clerk of the Circuit Court.

I asked for a copy of the Grand Jury Master List for the above years but was refused it by the Office of the Clerk of the Circuit Court.

JOSEPH H. KELINSON

SWORN TO and SUBSCRIBED before me this 4th day of October, 1977.

NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JUNE 19 1979
BONDED THRU GENERAL INSURANCE UNDERWRITERS

EXHIBIT "B"

AFFIDAVIT

My name is Dr. Samuel S. Shapiro. I am a statistician and am employed as the chairman of the Department of Mathematical Sciences at Florida International University, Miami, Florida, 33199. I have had prior experience as an expert in a case involving racial discrimination in the U.S. Federal Court in Philadelphia, Pennsylvania and have testified previously in Dade County regarding discrimination in Grand Jury selection.

Based upon the data supplied to me by Stephen Mechanic, which is appended to this statement, Exhibit A, I have determined the probability that the proportion of blacks and Latins chosen for the Grand Jury for the years indicated could have occurred from a random selection of registered voters. The probability of by chance selecting only 8 blacks out of 184 jurors out of the population of registered voters that averaged 13.9% black is less than .001 or less than one chance out of a thousand. The corresponding probability for choosing only 4 Latins from a population of registered voters that averaged 9.4% is also less than .001. Together as a group the probability of selecting by chance only 12 Latins and blacks out of 184 jurors out of a population of registered voters made up of 23.1% blacks and Latins is far less than .001. Therefore, one can conclude that both blacks and Latins are under-represented in the composition of Grand Juries.

Dr. Samuel S. Shapiro, Ph.D.

SWORN AND SUBSCRIBED before me this 3 day of October 1977 A.D.

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES MARCH 11 1980

Notary Public

NAME	SEX	RACE	DATE OF BIRTH
FRANCO, MICHAEL J.	M	W	10-29-11
ANS, CAROLYN H.	F	W	12-18-13
RAND, GERTRUDE G.	F	W	00-00-13
CRAWFORD, WYNELLE	F	W	6-06-14
DREW, HORACE E.	M	W	00-00-16
AKERMAN, JOSEPH	M	W	2-04-13
BARNES, GROVER C.	M	W	12-23-26
BOOKS, CHARLIE B.	M	W	6-17-09
OWN, ALVIN LLOYD	M	W	11-05-34
PPS, DOYNE MEDFORD	M	W	8-28-13
LSTRAP, BARBARA LAMOR	F	W	4-20-34
ORMAN, IRVING	M	W	12-03-13
HORTON, CHARLOTTE C.	F	W	00-00-27
MABRY, CLYDE	M	W	11-28-06
ENKEN, HELEN	F	W	2-22-03
METTS, RICHARD	M	W	12-03-28
MORENO, MARGARET SUE	F	W	1-18-47
SCHLOSSMAN, ARTHUR	M	W	1-21-11
SIMKOVIC, SIMON	M	W	00-00-30
SOTTILE, WILLIAM	M	W	2-08-17
STROZIER, JANESSE A.	F	W	11-02-21
TOPMILLER, CHARLES H.	M	W	8-17-10

ROSE, DAVID - Unable to identify due to insufficient information.

NO LATIN SURNAMES
NO BLACKS

NAME	SEX	RACE	DATE OF BIRTH
STOVER, ANN S.	F	W	9-8-10
COOPER, R. BELVIN	M	W	9-28-23
GREENOP, EDWARD C.	M	W	6-18-22
MOORE, PHILIP	M	W	7-03-07
PALANT, TED	M	W	7-7-33
BELCHER, VICTORIA E.	F	W	11-4-34
BLANCHARD, TOWNSEND H.	M	W	3-1-26
FISHER, MAX	M	W	5-20-10
GERSON, DENISE M.	F	W	9-17-45
HEYDER, HELEN R.	F	W	4-12-27
JAFFE, ARTHUR	M	W	3-26-25
LUSTGARTEN, BRUCE A.	M	W	4-22-31
PORTANTE, JR., PETER A.	M	W	2-6-37
ROSNER, SONDRA G.	F	W	7-11-36
SANCHEZ, CHRISTINA	F	W	10-20-47
SCHWARZ, ARLENE J.	F	W	4-6-43
SLATON, RALPH D.	M	W	8-04-20
STEPHENS, IRVIN J.	M	W	5-1-10
THOMPSON, BETSY S.	F	W	7-2-09
VAN LEER, EDWIN D.	M	W	2-14-48
WILLIAMS, CARL A.	M	B	9-9-24

BAILEY, JULIA LEE - Unable to identify due to insufficient information.

VENDETTA, GLORIA M. - Unable to identify due to insufficient information.

TWO LATIN SURNAMES
ONE BLACK

GRAND JURY - FALL TERM 1974

NAME	SEX	RACE	DATE OF BIRTH
ABBESS, LEONARD L	M	W	3-28-04
GARDNER, JOSEPH T.	M	W	0-0-17
CESARANO, PATRICK J.	M	W	2-26-12
JASPER, THELMA	F	W	6-30-22
ARMALY, JOSEPH W.	M	W	11-19-26
ALMEIDA, FRANCISCO	M	W	12-25-31
BENNETT, RICHARD LEE	M	W	6-22-52
BOGGS, RICHARD	M	W	1-13-03
BOROUGHS JR., SAMUEL C.	M	W	12-24-12
COLE, SAMUEL T.	M	W	0-0-32
KROLL, EDWARD	M	W	8-21-09
LARIVIERE, AGNES HERRING	F	W	9-22-15
MC GAHEY, MARY	F	W	1-17-14
MILLER, ARTHUR W.	M	W	4-26-20
NOPPENBERG, JOHN L.	M	W	0-0-17
PETRUCCI, JANNY	F	W	10-18-42
PRIME JR., EDWARD L.	M	W	10-18-24
RAWLS, ROBERT G.	M	W	6-22-07
ROERIG, GEORGE H.	M	W	10-19-09
SALMATE, J. BERNARD	M	W	0-0-09
THATCHER, JOHN W.	M	W	0-0-27
THOMPSON, JAMES G.	M	W	10-10-21
WALKER, PAUL S.	M	W	8-10-14

TWO LATIN SURNAMES
NO BLACKS

GRAND JURY - SPRING TERM 1975

NAME	SEX	RACE	DATE OF BIRTH
VANN, HAROLD R.	M	W	6-27-15
LUDDER, CARSTEN H.	M	W	0-0-22
MC NAUGHTON, VIRGINIA	F	W	1-25-30
GREENE, JUDITH M.	F	W	11-10-39
GALLAGHER, PHIL C.	M	W	0-0-26
ABESS, LEONARD, JR.	M	W	7-22-48
ARONOFF, AARON	M	W	8-2-21
BARRETO, ROGER J.	M	W	12-7-21
BOLLES, STEPHEN	M	W	12-6-49
COE, CONNIE	F	W	4-27-10
HUBERMAN, BEATRICE G.	F	W	12-2-11
JURESKI, WALTER	M	W	12-31-19
KORGE, GEORGE J.	M	W	1-30-18
NASH, DELORES A.	F	W	9-15-25
PLAGER, MORTON	M	W	1-15-25
RAFKIN, MAX	M	W	3-11-99
SCHAEFER, MARJORIE	F	W	0-0-18
SEERTH, ADOLPH	M	W	10-12-95
SILVERMAN, JENINE	F	W	9-16-42
WATSON, CHARLES R.	M	W	6-18-25
WITKIND, ELLIOT	M	W	7-27-22
VON ZAMFT, SANDRA	F	W	9-10-48

MADIN, JOAN - Unable to identify due to insufficient information.

SIMON, SAMUEL -Unable to identify due to insufficient information.

ONE LATIN SURNAME
NO BLACKS

NAME	SEX	RACE	DATE OF BIRTH
GILL, DANIEL K.	M	W	4-17-23
SMITH, JANE SEVIER	F	W	8-21-38
JACKSON, HAROLD M.	M	W	6-21-16
DeMARCO, ALEXANDER J.	M	W	6-3-19
SIMON, MARILYN	F	W	0-0-33
ALBERT, LESTER	M	B	11-21-20
BERNE, GEORGE R.	M	"	3-22-99
BOLGER, JAMES L.	M	"	7-21-03
BOOZ, ELIZABETH G.	F	"	7-8-11
COLLINS, STEPHAN C.	M	"	0-0-14
EFTHIMIOU, LOLA	F	"	7-5-03
FOGARTY, RAYMOND F.	M	"	11-25-20
HARLOW, JOHN R.	M	"	3-11-24
HARRISON, EDWARD R.	M	"	4-3-35
HODGES, CHARLES G., JR.	M	"	1-6-20
HOEHN, SCOTT J.	M	"	3-27-33
ISAN, JERRY	M	"	1-3-32
JONES, ELA P.	F	"	0-0-15
KANTER, NANCY	F	"	8-29-28
MILLER, DEAN R.	M	"	0-0-19
PRINCE, ELBERT R., JR.	M	"	8-26-20
SCHWARZBART, GUNTER	M	"	0-0-32
SUBERS, JEAN DORIS	F	"	0-0-16

NO LATIN SURNAMES
ONE BLACK

GRAND JURY - SPRING TERM 1976

NAME	SEX	RACE	DATE OF BIRTH
KRONISH, LEON	M	W	2-21-17
MOONEY, OTTIS A.	M	W	11-21-24
LANGER, SIDNEY W.	M	W	0-0-00
GAYNOR, MILTON M.	M	W	7-6-17
BOLEN, BUNYON D.	M	W	2-16-23
CANNON, RUTH C.	F	W	9-3-23
CLASBY, NANCY	F	W	9-21-38
COLEMAN, DAVID C., JR.	M	W	11-30-17
CORNELIUS, EUGENE C.	M	W	0-0-12
HALPERN, FAYE R.	F	W	1-4-21
HAUSMANN, DONALD J.	M	W	3-3-24
HENRY, C. J.	M	B	11-25-31
JONES, CLARKE	M	W	3-24-29
KELLER, JUNE	F	W	0-0-24
LABATON, ANN	F	W	6-25-26
MAMLIN, BETTY JEAN	F	W	3-8-25
MANDEL, SOL C.	M	W	4-23-29
MEYER, MARGARET	F	W	5-10-22
MILLER, SHIRLEY W.	F	W	12-16-17
MOZO, RALPH M.	M	W	10-18-12
SINGER, ALBERT H.	M	W	11-30-02
WARSHAW, BERT	M	W	6-2-25
YOUNG, FREDERICK R.	M	W	0-0-00

NO LATIN SURNAMES
TWO BLACKS

NAME	SEX	RACE	DATE OF BIRTH
PHILPITT, MARSHALL	M	W	0-0-22
CAESAR, JACK R.	M	W	12-6-19
STURM, ANNE	F	W	0-0-16
CROW, PATRICIA L.	F	W	0-0-27
ARGO, JAMES THOMAS	M	W	2-13-15
BARNES, A. DOUGLAS	M	W	4-22-03
BUDDE, EVELYN J.	F	W	7-8-36
CONDERMANN, SUE	F	W	7-27-38
CORBETT, GEORGE R.	M	W	10-12-47
CORDRAY, ANN	F	W	11-28-22
CORNELIUS, GEORGE R.	M	W	10-14-25
CORSETT, WINFRED	M	B	11-9-21
EPSTEIN, JOY R.	F	W	9-23-26
HEGGEN, VIRGINIA	F	W	10-4-26
HOYT, CLYDE R.	M	W	7-25-20
LEVITT, RONALD	M	W	3-23-31
MC GAHEY, KENT C.	M	W	5-19-40
NEAL, MARY E.	F	W	4-1-08
PALLOT, ROSALIND W.	F	W	3-14-34
QUENTIN, RUTH	F	W	1-16-19
SAMUELS, ERNEST	M	W	7-9-25
SIPKIN, GEORGE	M	W	7-2-04

POLANSKY, RANDY - Unable to identify due to insufficient information.

ONE LATIN SURNAME
ONE BLACK

GRAND JURY - SPRING TERM 1977

NAME	SEX	RACE	DATE OF BIRTH
BUCHANAN, FRANK M.	M	W	8-21-19
DEETS, OLIVIA S.	F	W	2-21-30
ANDREWS, JOYCE E.	F	W	7-10-33
CALHOUN, MIKE	M	W	3-13-27
BRYAN, RICHARD MARVIN	M	W	0-0-22
COGDELL, WALTER C.	M	B	7-29-99
CORNELIUS, HELEN A.	F	W	8-6-20
FEICK, DANIEL B.	M	W	9-14-34
FINCHER, DAVID	M	B	2-16-34
FRITZ, DAWN E.	F	W	9-29-55
GITTLEMAN, JOSEPH	M	W	3-6-21
HENRY, MARGARET M.	F	B	6-29-34
JASPER, HARRY W.	M	W	12-15-06
JOHNSON, LILLIAN M.	F	W	1-16-04
KANNER, MARCIA J.	F	W	8-24-35
KOCH, JACK D.	M	W	6-13-12
LEHFELDT, JANE	F	W	7-14-16
LONGO, C. JOHN	M	W	8-11-24
SAMWAY, J.MICHAEL	M	W	3-22-37
SMITH, THOMAS	M	W	0-0-26
STOKES, WALTER J.	M	W	9-19-12
WALLER, M. L., JR. (LEE)	M	W	12-7-24
WORONER, MURRY	M	W	8-21-13

NO LATIN SURNAMES
THREE BLACKS

EXHIBIT "D"

A F F A D A V I T

My name is Dr. Paul G. Neumann. I am an Assistant Professor and Director of Experimental Training in the Department of Psychology of the University of Miami. I am a statistician and teach statistics at the graduate level.

Based upon data supplied to me by Stephen Mechanic for the periods Fall, 1973 to Spring, 1977, inclusive, a copy of which is attached to this affadavit, I have calculated the probability that the proportions of Blacks and Latins actually represented on the Dade County, Florida Grand Jury during these eight periods represented by the data could have been randomly selected from a population with the proportions of Blacks and Latins as represented in the data for Registered Voters in Dade County, Florida for the eight periods. I have determined that the probability that the composition of the Grand Juries for these periods represents a random selection is less than .005 or less than five in one-thousand. Any probability of less than five in one-hundred is considered a statistically-significant departure from chance. Therefore, it can be concluded that Blacks and Latins are significantly under-represented in the composition of Dade County, Florida Grand Juried for the period Fall, 1973 to Spring 1977.

Dr. Paul G. Neumann

STATE OF FLORIDA)
COUNTY OF DADE) ss

Signed before me this 3 day of October, 1977 at Coral Gables, Florida.

Marcia Burros, Notary Public

Notary Public, State of Florida at Large.
My Commission Expires June 24, 1978.

NAME	SEX	RACE	DATE OF BIRTH
FRANCO, MICHAEL J.	M	W	10-29-11
EVANS, CAROLYN H.	F	W	12-18-13
RAND, GERTRUDE G.	F	W	00-00-13
CRAWFORD, WYNELLE	F	W	6-06-14
DREW, HORACE E.	M	W	00-00-16
AKERMAN, JOSEPH	M	W	3-04-13
BARNES, GROVER C.	M	W	12-23-05
BROOKS, CHARLIE B.	M	W	6-17-09
BROWN, ALVIN LLOYD	M	W	11-05-04
CAPPS, DOYNE MEDFORD	M	W	8-28-13
GILSTRAP, BARBARA LAMOR	F	W	4-20-34
GORMAN, IRVING	M	W	11-03-13
HORTON, CHARLOTTE C.	F	W	00-00-07
MABRY, CLYDE	M	W	12-28-06
MENKEN, HELEN	F	W	3-12-03
METTS, RICHARD	M	W	12-03-08
MORENO, MARGARET SUE	F	W	1-13-47
SCHLOSSMAN, ARTHUR	M	W	1-03-11
SIMKOVIC, SIMON	M	W	00-00-00
SOTTILE, WILLIAM	M	W	3-08-17
STROZIER, VENESSE A.	F	W	11-08-21
TOPMILLER, CHARLES F.	M	W	8-17-13

ROSE, DAVID - Unable to identify due to insufficient information.

NO LATIN SURNAMES
NO BLACKS

NAME	SEX	RACE	DATE OF BIRTH
TOVER, ANN S.	F	W	9-8-10
COOPER, R. BELVIN	M	W	9-28-23
GREENOP, EDWARD C.	M	W	6-18-22
MOORE, PHILIP	M	W	7-03-07
PALANT, TED	M	W	7-7-33
BELCHER, VICTORIA E.	F	W	11-4-14
BLANCHARD, TOWNSEND H.	M	W	3-1-26
FISHER, MAX	M	W	5-20-10
GERSON, DENISE M.	F	W	3-17-48
HEYDER, HELEN R.	F	W	4-12-27
JAFFE, ARTHUR	M	W	3-26-25
LUSTGARTEN, BRUCE A.	M	W	4-22-31
PORTANTE, JR., PETER A.	M	W	2-6-27
ROSNER, SONORA S.	F	W	7-11-26
SANCHEZ, CHRISTINA	F	W	12-20-47
SCHWARZ, ARLENE J.	F	W	4-6-43
SLATON, RALPH D.	M	W	8-24-20
STEPHENS, IRVIN J.	M	W	5-1-10
THOMPSON, BETSY S.	F	W	7-2-29
VAN LEER, EDWIN D.	M	W	3-14-48
WILLIAMS, CARL A.	M	B	3-3-24

BAILEY, JULIA LEE - Unable to identify due to insufficient information.

VENDETTA, GLORIA M. - Unable to identify due to insufficient information.

TWO LATIN SURNAMES
ONE BLACK

NAME	SEX	RACE	DATE OF BIRTH
ABBESS, LEONARD L	M	W	3-28-04
GARDNER, JOSEPH T.	M	W	0-0-17
CESARANO, PATRICK J.	M	W	2-26-12
JASPER, THELMA	F	W	6-30-22
ARMALY, JOSEPH W.	M	W	11-19-36
ALMEIDA, FRANCISCO	M	W	12-26-31
BENNETT, RICHARD LEE	M	W	6-22-52
BOGGS, RICHARD	M	W	1-10-08
BOROUGHS JR., SAMUEL C.	M	W	12-24-12
COLE, SAMUEL T.	M	W	0-0-22
KROLL, EDWARD	M	W	8-01-09
LARIMORE, AGNES HERRING	F	W	9-22-15
MC GAHEY, MARY	F	W	1-17-04
MILLER, ARTHUR V.	M	W	4-25-29
NOPPENBERG, JOHN L.	M	W	0-0-17
PETRUCCI, JANNY	F	W	10-19-42
PRIME JR., EDWARD L.	M	W	10-18-04
RAWLS, ROBERT O.	M	W	8-22-27
ROBERTS, GEORGE H.	M	W	12-16-08
SALMATE, J. BERNARD	M	W	0-0-29
THATCHER, JOHN V.	M	W	0-0-27
THOMPSON, JAMES S.	M	W	10-10-21
WALKER, PAUL S.	M	W	5-10-14

TWO LATIN SURNAMES
NO BLACKS

NAME	SEX	RACE	DATE OF BIRTH
WANN, HAROLD R.	M	W	6-27-15
LUDDER, CARSTEN H.	M	W	0-0-22
MC NAUGHTON, VIRGINIA	F	W	7-25-30
GREENE, JUDITH H.	F	W	11-10-39
GALLAGHER, PHIL C.	M	W	0-0-26
ABESS, LEONARD, JR.	M	W	7-23-48
ARONOFF, AARON	M	W	8-2-21
BARRETO, ROGER J.	M	W	12-9-21
BOLLES, STEPHEN	M	W	12-6-49
COE, CONNIE	F	W	4-27-10
HUBERMAN, BEATRICE B.	F	W	12-3-11
JUREIKI, WALTER	M	W	12-21-19
KORGE, GEORGE J.	M	W	1-30-18
KOCH, DELORES A.	F	W	9-18-23
PLAGER, MORTON	M	W	1-19-25
RAFKIN, MAX	M	W	7-11-96
SCHAEFER, MARJORIE	F	W	0-0-18
SEERTH, ADOLPH	M	W	10-12-95
SILVERMAN, JENINE	S	W	9-16-42
WATSON, CHARLES R.	M	W	6-18-25
WATKINS, ELLIOT	M	W	7-27-03
VON ZAST, SANDRA	F	W	9-10-48

MASIN, JOAN - Unable to identify due to insufficient information.

SIMON, SAMUEL -Unable to identify due to insufficient information.

ONE LATIN SURNAME
NO BLACKS

NAME	SEX	RACE	DATE OF BIRTH
GILL, DANIEL K.	M	W	4-17-23
SMITH, JANE SEVIER	F	W	8-21-38
JACKSON, HAROLD M.	M	W	6-21-16
DeMARCO, ALEXANDER J.	M	W	6-3-19
SIMON, MARILYN	F	W	0-0-33
ALBERT, LESTER	M	B	11-21-20
BERNE, GEORGE R.	M	W	3-22-99
BOLGER, JAMES L.	M	W	7-21-03
BOOZ, ELIZABETH G.	F	W	7-8-11
COLLINS, STEPHAN C.	M	W	0-0-14
EFTHIMIOU, LOLA	F	W	7-6-29
FOGARTY, RAYMOND F.	M	W	11-25-22
HARLOW, JOHN R.	M	W	8-11-24
HARRISON, EDWARD R.	M	W	4-3-35
HOBBES, CHARLES S., JR.	M	W	1-8-20
HOEHN, SCOTT J.	M	W	3-27-23
IDAN, JERRY	M	W	1-3-32
JONES, EVA P.	F	W	0-0-15
KANTER, NANCY	F	W	6-29-23
MILLER, DEAN R.	M	W	0-0-19
PRINCE, ELBERT R., JR.	M	W	6-25-20
SCHWARZBART, GUNTER	M	W	3-3-32
SUBERS, JEAN DORIS	F	W	3-10-16

NO LATIN SURNAMES
ONE BLACK

NAME	SEX	RACE	DATE OF BIRTH
KRONISH, LEON	M	W	3-21-17
MOONEY, OTTIS A.	M	W	11-21-24
LANGER, SIDNEY W.	M	W	0-0-09
GAYNOR, MILTON M.	M	W	7-6-17
BOLEN, SUNYON D.	M	W	2-16-23
CANNON, RUTH C.	F	B	9-3-28
CLASBY, NANCY	F	W	9-21-18
COLEMAN, DAVID C., JR.	M	W	11-30-17
CORNELIUS, EUGENE C.	M	W	0-0-12
HALPERN, FAYE R.	F	W	1-4-21
HAUSMANN, DONALD J.	M	W	0-0-04
HENRY, C. W.	M	B	11-05-01
JONES, CLARKE	M	W	0-04-09
KELLER, JUNE	F	W	0-0-04
LABATON, ANN	F	W	6-05-25
MAMLIN, BETTY JEAN	F	W	0-6-05
MANDEL, SOL C.	M	W	4-03-09
MEYER, MARGARET	F	W	5-10-02
MILLER, SHIRLEY W.	F	W	12-16-17
MOCO, RALPH H.	M	W	10-16-12
SINGER, ALBERT H.	M	W	11-30-02
MARSHAM, BERT	M	W	6-0-05
YOUNG, FREDERICK R.	M	W	0-0-08

NO LATIN SURNAMES
TWO BLACKS

NAME	SEX	RACE	DATE OF BIRTH
PHILPITT, MARSHALL	M	W	0-0-22
CAESAR, JACK R.	M	W	12-6-19
STURM, ANNE	F	W	0-0-16
CROW, PATRICIA L.	F	W	0-0-27
ARGO, JAMES THOMAS	M	W	2-13-15
BARNES, A. DOUGLAS	M	W	4-22-03
BUDDE, EVELYN J.	F	W	7-6-36
CONDERMANN, SUE	F	W	7-27-38
CORBETT, GEORGE R.	M	W	10-12-47
CORDRAY, ANN	F	W	11-28-02
CORNELIUS, GEORGE R.	M	W	10-14-19
CORSETT, WINFRED	M	B	11-9-21
EPSTEIN, JOY R.	F	W	9-23-25
HESSEN, VIRGINIA	F	W	10-4-25
HOYT, CLYDE R.	M	W	7-28-20
LEVITT, RONALD	M	W	9-23-21
MC GAHEY, KENT C.	M	W	8-19-42
NEAL, MARY E.	F	W	6-1-08
PALLOT, ROSALIND W.	F	W	3-14-34
QUENTIN, RUTH	F	W	1-14-19
SAMUELS, ERNEST	M	W	7-9-06
SIPKIN, GEORGE	M	W	7-2-14

ROLANSKY, RANDY - Unable to identify due to insufficient information.

ONE LATIN SURNAME
ONE BLACK

GRAND JURY - SPRING TERM 1977

NAME	SEX	RACE	DATE OF BIRTH
BUCHANAN, FRANK M.	M	W	8-21-19
DEETS, OLIVIA S.	F	W	2-21-50
ANDREWS, JOYCE E.	F	W	7-10-33
CALHOUN, MIKE	M	W	8-13-27
BRYAN, RICHARD MARVIN	M	-	0-0-22
COGDELL, WALTER C.	M	B	7-28-39
CORNELIUS, HELEN A.	F	W	8-6-20
FEICK, DANIEL B.	M	W	9-14-34
FINCHER, DAVID	M	B	2-16-34
FRITZ, DAWN E.	F	W	9-29-55
GITTLEMAN, JOSEPH	M	W	9-6-21
HENRY, MARGARET M.	F	B	6-23-34
JASPER, HARRY W.	M	W	10-16-06
JOHNSON, LILLIAN M.	F	W	1-18-04
KANNER, MARCIA J.	F	W	9-24-35
KOCH, JACK D.	M	W	6-12-12
LEHFELDT, JANE	F	W	7-14-15
LONGO, C. JOHN	M	W	8-11-24
MAHAY, J.MICHAEL	M	W	3-22-37
SMITH, THOMAS	M	W	0-0-26
STOKES, WALTER J.	M	W	3-15-10
WALLER, W. L., JR. (LEE)	M	W	10-7-34
WORONER, MURRY	M	W	8-21-28

NO LATIN SURNAMED
THREE BLACKS

EXHIBIT "E"

DEMOGRAPHIC CHARACTERISTICS OF CENSUS TRACTS OF CIRCUIT COURT JUDGES BASED ON 1970 CENSUS

DADE COUNTY CIRCUIT JUDGES	CENSUS TRACT	PERCENTAGE OF BLACKS	PERCENTAGE OF LATINS	MEDIAN INCOME	PERCENTAGE OF FAMILIES BELOW POVERTY LEVEL
JOHN R. BLANTON 9220 SW 59 St.	85.02	0.3	17.0	$14,374	0.7
DIXIE H. CHASTAIN 4330 Bay Point Dr.	21	0.6	10.8	$ 9,982	4.0
FRANCIS J. CHRISTIE 1104 Andora Ave.	79.01	0.3	21.0	$ 7,375	-
EDWARD D. COWART 8340 SW 142 St.	82.01	-	4.0	$18,549	2.6
GRADY L. CRAWFORD 7911 SW 58 St.	77.02	0.1	18.0	$10,945	3.9
IRA L. DUBITSKY 7753 SW 102 Pl.	84.01	0.2	12.0	$11,256	5.1
HARVIE S. DUVAL 9876 NE 12 Ave.	12.02	0.2	6.7	$10,324	6.4
JAMES J. EARNEST 1897 SW 16 Terr.	64	0.2	70.0	$ 5,805	15.1
BOYCE F. ESELL, JR. 2025 S. Alhambra Circle	61.01	-	26.0	$ 9,692	11.4
HAROLD G. FEATHERSTONE 1232 SW 17th St.	79.01	0.3	21.0	$ 7,375	-
JOHN V. FERGUSON 7890 SW 152 St.	82.01	-	4.0	$18,549	2.6
RALPH B. FERGUSON,JR. 365 NW 14 Ct.	51	1.1	60.0	$ 3,115	13.3
RICHARD S. FULLER 9360 SW 140 St.	83.01	90.7	0.4	$ 8,449	11.0
JOHN GALE 6285 Old Cutler Rd.	73	1.5	7.7	$11,777	6.2
SEYMOUR GELBER 3443 N. Meridian Ave.	41.01	0.4	11.0	$ 4,285	10.6
WILLIAM E. GLADSTONE 8995 SW 84 Ct.	78.03	0.3	7.0	$13,046	3.1
DAVID GOODHART 11231 SW 69 Ct.	78.02	0.1	5.0	$15,634	4.2
PHEA PINCUS GROSSMAN 1940 Bay Dr.	39.02	0.3	5.0	$ 7,478	9.2
WILLIAM A. HERIN 470 NE 81 St.	21	0.6	10.8	$ 9,982	4.0
JAMES W. KEHOE 8900 SW 104 St.	78.02	0.1	5.0	$15,634	4.2

EDWARD S. KLEIN 1900 SW 59 Ave.	59.04	0.1	36.0	$ 8,319	8.7
FRANCIS X. KNUCK 60 Olive Dr.	16.02	-	38.0	$ 8,109	10.1
JOHN RED LAKE 5330 SW 7 St.	58.01	0.1	58.0	$ 7,464	10.3
THOMAS E. LEE 2490 W. Bisc. Canal Dr.	11.01	0.1	18.0	$ 7,895	5.2
ELLEN J. MORPHONIOUS 8640 SW 84th Ave.	77.03	0.1	6.0	$ 9,602	4.7
GEORGE ORR 8235 SW 99 St.	78.03	0.2	7.0	$13,046	3.1
J. GWINN PARKER 1341 Castile Ave.	61.02	0.3	17.0	$11,287	4.3
DAVID POPPER 8900 SW 85 St.	76.04	0.3	9.2	$ 4,211	7.6
DANIEL SATIN 11930 N. Bayshore Dr.	1.03	-	-	$ 5,417	7.8
ARDEN M. SIEGENDORF 2351 S. Bayshore Dr.	71	56.2	4.0	$ 5,377	13.7
SAMUEL I. SILVER 90 Edgewater Dr.	73	1.5	7.7	$11,777	6.2
DONALD E. STONE 4935 Riviera Dr.	75	1.9	8.7	$ 983	4.6
HAROLD R. VANN 150 Ocean Dr.	46	Demographic area too small to be calculated			
SIDNEY M. WEAVER 9050 SW 84 Ct.	78.03	0.2	7.0	$13,046	3.1
GENE WILLIAMS 811 NW 195 Terr.	99.02	-	8.6	$11,823	4.4

EXHIBIT "F"

MEMORANDUM

CTS Executive Committee — DATE: December 1, 1976

SUBJECT: December Forum Agenda

FROM: Rev. Edwin Gilligan, Jr.

DECEMBER FORUM ANNOUNCEMENT

TIME: 9:30 a.m. - 12:00 noon
DATE: Friday, December 10, 1976
PLACE: County Commission Chambers
County Courthouse
73 West Flagler St.

AGENDA

1. Burning Issues

2. Does Opa-Locka have new solutions in code enforcement regarding bad housing?

3. Is the Grand Jury composition an unfair representation of the community?

2. Does Opa-Locka have new solutions in code enforcement regarding bad housing?

BACKGROUND

In March 1950, the League of Women Voters of Miami, finding that slum areas breed crime, disease and conservice socially and financially drain the total community, called for a comprehensive plan of slum clearance and the improvement of housing by government and private enterprise. Twenty years later, the "Profile of Metropolitan Dade County: Conditions and Needs," published by the Community Improvement Program, showed that the

of the housing stock in minority neighborhoods are deficient or, there are, at least, 23,000 deficient units overall in Dade County. The report further states that only one percent of these 23,000 deficient units are so dilapidated as to require demolition and clearance. Investigation stories in the Miami News, the Miami Herald, and a Model City "Germ City Report" show that most of these units are multiple-family units owned by absentee landlords. Twenty-five years later, the Comprehensive Master Plan for Dade County proposed that these units be required to be brought up to standard. The Minimum Housing Standards Division of the Dade County Department of Housing and Urban Development is charged with the function of enforcing these standards of making housing "fit for human habitation." The question, thus, after twenty-five years, is what are the impediments that prevent the result of improved housing under the present Minimum Housing Standards Ordinance? Is it a question that the Ordinance is too weak to punish owners who violate the Ordinance, or should Dade County itself be authorized, as in the City of Opa-Locka, to rehabilitate the housing? Who should be charged the cost, the owner? the tenants? the public? Is it economically unfeasible for the owners to comply with strict enforcement orders? Would strict enforcement displace 23,000 tenants as was reported to have been said by the Minimum Housing Office, when there is no private housing market for these tenants and when there is already a 20,000 waiting list for public housing? Should Dade County take over the housing owners choose to abandon to keep from complying with strict enforcement orders and convert such housing to public housing? Or, should such owners be provided "positive reinforcement" to rehabilitate their property through tax relief proposals or low interest loans? Should absentee owner landlords benefit from such tax relief and low interest loan programs? Should there be a form of rent control as a condition to such grants?

Symposium on Landlord/Tenant

The CRB Forum Division proposes to present the ordinance passed by the City of Opa-Locka last October for the discussion of whether or not this ordinance should be adopted by Dade County on a county-wide basis where it provides: (1) that a landlord may be found in violation of such housing standards on a prima facie basis (this may place the burden of proof on the landlord to show that he is in compliance); (2) that its local housing authority may make repairs or demolish such housing, if uninhabitable, if landlords fail to comply with emergency enforcement orders; and (3) that its local housing authority may receive and administer security deposits already made by tenants to be applied towards such repairs. Accordingly, the Forum Division is inviting Mrs. Eufala Frazier, the Director of T.E.A.M., an organization that represents and supports low income tenants, to clarify whether deficient housing continues to be a present problem throughout Dade County. The Forum Division is also inviting Mayor Candido Olardino and City Attorney Albert L. Weinberg, of the City of Opa-Locka, to clarify the misunderstanding of their ordinance. The Forum Division is also inviting Mr. Eugene F. Miles, from the Dade County Minimum Housing Standards Office, to clarify the effectiveness and problems of obtaining compliance by landlords with the Dade County Minimum Housing Standards Ordinance, and the feasibility of Dade County adopting the City of Opa-Locka Ordinance on a county-wide basis.

(2) Is the Grand Jury composition an unfair representation of the community?

Background

The Community Relations Board has received as a burning issue, at its September Forum, the claim that there is no Black, Latin, or poor representation on the Grand Jury.

Further investigation and research has shown that it appears that the selection process in obtaining Grand Jury persons does not cause the Grand Jury to necessarily reflect the identifiable groups of the community, particularly the Blacks, Latins, the poor, and the young. Further, the City of Miami, in November, adopted a resolution.... "urging the Grand Jury Commission of Metropolitan Dade County to exercise scrutiny in their preparation of the list of jurors to serve as grand jurors and thereby demonstrate that the part of the judicial system referred to as the Grand Jury and the guardian of the police power of the state is a system and means whereby all of the people of Dade County can participate directly in the administration of their government." The concern of whether the Grand Jury composition is an accurate representation of the community is not limited to the need for the function of the Grand Jury to investigate crimes but also extends to the need for the watchdog function of the Grand Jury to investigate and make recommendations regarding operations of government. The questions, thus, are: Should Dade County grand jurors reflect necessarily the identifiable groups of Dade County, or, would the implementation of such a requirement be a form of reverse discrimination? Should there be another selection process done on a random basis in addition to a list from voters' registration list, or would such a duplication be counter-effective in obtaining qualified "blue ribbon" grand jurors who can handle complex questions?

SUMMARY OF COMMENTS

The CRB Forum Division proposes to bring to the community this issue with the objective to discuss what ways could be obtained to assist the Grand Jury commissioners, presently composed of the forty-one Circuit Court judges, to prepare a list of jurors that would be fairly representative of the total community, to discuss whether or not the present composition of the Grand Jury and the

way it is selected is in fact fairly representative of the total true interest and needs of justice of all the people in Dade County, and, to discuss whether it is feasible to adopt alternative selection processes. Accordingly, the Forum Division, for assistance in meeting those objectives, is inviting Attorney Jay Eisenhower, the attorney representing clients attacking the Grand Jury selection process, and, Representative Allan Becker, who sponsored in the past legislative session a bill that the voters' registration list be the basis for selecting grand jurors, as speakers.

MEMORANDUM

Dade County Community Relations Board Council

DATE January 4, 1977

SUBJECT January Forum Agenda and Brief

Rev. Edwin Gilligan, Jr.
Chairman, Forum Division
Community Relations Board

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The Dade County Community Relations Board shall hold a Forum on Friday, January 14, 1977, from 9:30 a.m. to 12:00 noon, at the County Commission Chambers, County Courthouse, 73 West Flagler Street. The Agenda shall be as follows:

1. Burning Issues (unscheduled community concerns)

2. The Selection Process for the Grand Jury: Part II

3. What are the Problems and Human Needs Behind a School Policy of Excessive Discipline: Suspensions, and Expulsions?

4. The Grievance Process for the Grand Jury: Part II

For this subject, the speakers shall be the Presiding Judge of the Dade County Grand Jury, Hon. Harold Rosen, and the President of the Grand Jury Association of Florida, Inc., Mr. Ben H. Goldman.

A. Background

This subject is a continuation of the December Forum. The CRB Board Council received a Forum Report at its December meeting proposing findings and recommendations. The CRB Board Council did not determine the question regarding the selection process for the Grand Jury. The question before the CRB Board Council was whether the selection process was conducive, as an end, to a fair Grand Jury; that is, whether the Grand Jurors who are representative of the interests of the Grand Juries who are representative of the interests of the

the people of the community, specifically, in relation to the functioning of government function. The Forum Report stated that the perception is that the selection process tends to produce white, middle and upper class grand juries who tend to review problems that reflect the families needs and interests of members of their class, but tend not to review the needs and interests of members outside of their class that they are not familiar with. Thus, it was determined by the Old Board counsel to seek to hear the concerns of the Presiding Judge of the Dade County Grand Jury, and the proposal of the Grand Jury Association of Florida, Inc., at the January Forum, regarding the selection process.

3. Statement of Objectives

One objective of the Forum shall be to seek from the Presiding Judge of the Grand Jury the interest he may have regarding whether there is a need of assistance in reforming the selection process, or whether there is a need to change the system. Further, it shall be an objective of the Forum to review the initial proposal by the Grand Jury Association of Florida, and to compare it with the proposal by Representative Alan Becker that was presented at the December Forum.

(1) The present system: Under the present system, each of the State Circuit Court Judges, sitting as Grand Jury Commissioners, nominate ten persons to form a prospective Grand Jury pool of five-hundred names. Then the judges, sitting as Grand Jury Commissioners, after screening, choose a venire of ninety persons from this pool (group of persons to be called to serve on the Grand Jury). On the date that they are summoned, the 90 names are put in a disk-bowl and the Presiding Judge will draw twenty-three names for the Grand Jury panel.

(2) Proposal by Representative Alan Becker: Under the proposal introduced last year in the Florida Legislature by Representative Alan Becker, the function of

the Florida Senate Judges sitting as Grand Jury commissioners would be eliminated. In his proposal, the initial pool of grand jurors, the venire, and the Grand Jury panel would result from a computer assisted random selection process originating from the Supreme Court registration list and would be administered by an administrative clerk. This selection process would be similar to the way in which federal grand juries are selected.

Pursuant to the Grand Jury Association of Florida, Inc., the initial pool of grand jurors would originate from the Supreme Court registration list by random selection. However, the remaining functions of the Circuit Court Judges as jury commissioners would be maintained. Under this proposal, the judges, as jury commissioners, would select randomly from the Grand Jury pool a tentative venire and discuss the qualifications of the persons, would inquire from any state and local government agency for relevant information, and review responses of questionnaires sent to persons on the tentative venire. Any Grand Jury commissioner, by a vote, may eliminate any name from the tentative venire list. (See Sections 14, 15, 16 and 18 for the specific grounds potential grand jurors would be "selected out" as set forth in the proposal by the Grand Jury Association of Florida included in the attachments to this Brief, namely, pages 16, 17, 18, 19 and 20 of their proposal).

II. What are the problems and issues raised because a complete picture of minority participation, independence, and representation?

The speaker for this subject shall be Dr. Leonard M. Britton, Interim Superintendent, Dade County Public Schools.

A. Background

At the January 6th Forum in 1972, concerns were raised about the reasons for and the consequences of the disproportionate

suspensions and expulsions of Black students. As a result, the school system initiated a new policy of keeping such children within the school system through a policy of in-house suspensions in order to avoid the consequences of children being out of school and being without any education. This new policy included the policy of in-house suspension to special "S.S.S. classes" within the same school, or reassignments to approximately schools. Consequently, since 1974, outdoor suspensions of school children have dropped from 14,000 to 4,400, and expulsions have dropped from 187 to zero, but cases of in-house suspensions and reassignments to approximately schools have increased to more than 25,000. Officials claim that this in-house suspension policy has had little impact on behaviour. In was the question of this behaviour that the end, in its special Report "Corporal Punishment in the Schools, November 1976," made recommendations that included the need for coordination of agencies in dealing with discipline and the welfare of the child, and the need of integration of the functions of the State and, particularly, the division of Youth Services, with the School Board.

3. Statement of Objectives

a. The first objective of this Forum is to invite Dr. Bolton to explain why the school system is 'reaching down' in discipline and why this will mean building up suspensions and expulsions. It is hoped that this objective will clarify the concern that his proposed policy is a retreat from the 1973 affirmative effort to keep children in school who otherwise would be out of school. Further, it is hoped that this objective will clarify the concern that his proposed new policy will mean a return to disproportionate suspensions and expulsions of Black students.

b. The second objective is to invite Dr. Bolton to discuss the meaning of his new policy in relation to other institutions of society, particularly, those other agencies that serve the welfare of children. It is

hoped that this objective will clarify the need for joint policy making, planning, implementation and evaluation regarding the following questions:

1.1 The need for preventive care of children who are not to be served within the school system.

1.2 The human need where the school system does not, or is not able to, treat perceived maladaptive, its causes, and its consequences.

1.3 The need for institutions to correct or discipline those environmental influences that maintain maladaptive behavior and maladjustment.

1.4 The need to review the standards for using disciplines, suspension, and expulsion policies and the administration of these policies from a civil rights and community relations perspective.

EXHIBIT "H"

COMMUNITY RELATIONS BOARD, INC.

A SPECIAL REPOR

No. 77-77-3

THE SELECTION PROCESS FOR THE GRAND JURY: ITS DIAGNOSIS AND TREATMENT

MARCH 1977

METROPOLITAN DADE
FLORIDA

THE SELECTION PROCESS FOR THE GRAND JURY: ITS DIAGNOSIS AND TREATMENT

SPECIAL REPORT

METROPOLITAN DADE COUNTY, FLORIDA
COMMUNITY RELATIONS BOARD

THE SELECTION PROCESS FOR THE GRAND JURY: ITS DIAGNOSIS AND TREATMENT

Submitted by:

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Introduction

"Methods of racial exclusion in the South (representation on juries) however are becoming more subtle, while throughout the rest of the nation official requirements and economic factors reduce the number of Blacks on juries. . . . In this case the grand juries, which are generally chosen from persons nominated by public officials, civic organizations or 'prominent' citizens the likelihood of representative Black participation is even smaller."

Institutional Racism in America
By Louis L. Knowles and Kenneth Prewitt

"Among the more sophisticated methods (systematic exclusion of Blacks from juries) are those of summoning Blacks for jury service without placing them on the panels, and agreements between counsel, sometimes even with the open support of the judge, to remove any Blacks on the panel by use of preemptory challenges."

U. S. Commission on Civil Rights, Report on Justice, 1961 page 100

"A typical example of grand jury selection is the situation in Baltimore, where grand juries are chosen by the judges of the supreme bench who meet three times a year to discuss the qualifications of prospective jurors. To obtain qualified Negro jurors, the judges have asked prominent colored persons to submit the names of likely members of their race...this is tokenism at best."

U. S. Commission on Civil Rights, Report on Justice, 1961 page 94

"The jury system, like judicial agencies and the legal profession, either through conscious prejudice or through the unintended consequences of applying apparently non-racial standards excludes Black people."

Institutional Racism in America
By Louis Knowles and Kenneth Prewitt

INTRODUCTION

"Some of our courts, moreover, have lost the confidence of the poor . . . . We have found that the apparatus in some areas has itself become a focus for distrust and hostility . . . . Too often the courts have operated to aggravate rather than relieve the tensions that ignite and fire disorders . . . ."

Report of the National Advisory Commission on Civil Disorders

" . . . In recent years, the Grand Jury as an institution has come under criticism. The Grand Jury was abolished in England in 1933 and has also been abolished in many states in this country . . . . However, it remains part of the federal system and many state systems because of constitutional provisions which cannot be easily changed. As lawyers charged by our Code of Professional Responsibility with assisting in the improvement of the legal system, we must work to resolve existing problems of the grand jury and its operation."

ABA Criminal Justice Section to Seek Grand Jury Reform, Richard Gerstein, Section Chairman, 1977

" . . . If oppression and conflict are to give away to harmony and content, the way must be found to recognize cultural differences within a framework of political and economic unity . . . . There is enough accumulated experience throughout the world to make it clear that heterogeneous populations do not have to be faced with the problems of the prejudice and intergroup discrimination."

Racial and Cultural Minorities: An Analysis of Prejudice and Discrimination, Simpson and Yinger

SPECIAL REPORT

THE SELECTION PROCESS FOR THE GRAND JURY

I. DIAGNOSIS

A. Symptoms

The Dade County Community Relations Board, at its September 1976 Forum, received during its "Burning Issues" portion the complaint from a Latin community leader, later supported by similar complaints, that Latins are not being called to serve on the Dade County grand juries as they ought to be. The concern is that Latin community dissatisfaction and alienation exist because of perceived systematic exclusion from participating in the criminal justice system to meet their needs, as evidenced that only one of ten persons with Spanish-speaking surnames have been chosen on the grand juries these past few years. Because they constitute 35% of the total community, it is perceived by them that this disparity is in conflict with professed democratic principles of equal justice. A similar concern has been raised by others that the grand juries have not been relating to the interests and needs of the Black community and the poor community because the composition of recent grand juries appears to represent only the White male middle class people only.

The Dade County Community Relations Board does find that an unhealthy condition affecting community relations exists in this general community regarding the criminal justice system, relating to its grand jury system. (See Exhibit "C", page 12.) This unhealthy condition is the sense of alienation and exclusion believed and felt by leaders of the Latin, Black, and poor community in the direct participation and administration of their government.

B. FINDINGS REGARDING THE SOURCE OF THE CONCERN

It is the diagnosis by the Dade County Community Relations Board that the source of this concern is the active perception held by representatives of the Latin, Black, and poor communities that the selection process for the Dade County Grand Jury System is not reasonably in the providing of a fair opportunity for all citizens to be represented on the Dade County grand juries regarding their interests and needs, because of systematic exclusion that results from their race, sex, ethnic origin, economic or social condition. (See Exhibit "C", pages 18 and 19).

Because of this diagnosis regarding the source of the concern, the selection process for the grand jury, the Dade County Community Relations Board hereby reviews proposed treatment plans that include the following alternatives: (a) keeping the selection process as it is; (b) changing the selection process; (c) findings and analysis of needs; and, (d) recommendations.

II. PROPOSED TREATMENT PLANS

A. KEEPING THE SELECTION SYSTEM AS IT IS

1. Advising the Affected Communities

It is the opinion of the State Attorney and of the Clerk of the Circuit Court, Dade County, that there is no reason for not keeping the selection process as it is. (See December Forum Minutes, Exhibit "B", pages 15 and 16, and, December Forum Report, Exhibit "C", page 17.

Therefore, an alternative treatment plan would be to leave the selection process as it is, and, in order to respond to the findings regarding the sense of alienation that exists in affected communities and the source of concern, the proposed choice would be to educate the affected communities that quality

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grand juries representing the interests of all the people have been produced and are being produced by the selection process. In response to the argument of little or no participation of the representatives of the affected communities on the grand juries, the effect of race treatment plan is that it would be based upon the assumption that there is a duty of the communities that positive exclusion by the selection process is proof discrimination. Further, any exclusion or lack of Latins, Blacks, or the poor, would be assumed not to be due to intentional discrimination due to race, ethnic origin, sex, economic or social conditions, and no discrimination that is proven will be unconstitutional or would be wrong. (See Exhibit "E", page 19).

Findings

The Dade County Community Relations Board's perspective regarding the value of keeping the selection system to the grand jury as it is, is not based upon the assessment of whether there is proven discrimination due to race, etc., but whether the present selection process produces quality grand juries relative to representing all the people of Dade County. The Dade County Community Relations Board adopts the finding of the 1976 December Forum Report that the present selection process has not been achieving as a goal quality grand juries, namely, those grand juries who are representatives of the interests of all the people of the community, specifically, in relation to the interests of government function. (See December Forum Report, Exhibit "C", pages 17, 18 and 19.)

This finding does not imply that one needs to be of Latin extraction to be sensitive to Latin needs, or be Black to be sensitive to Black needs, or be poor to be sensitive to poor needs. Nor does the finding imply that the judges, as jury commissioners, and the members of the various grand juries, if they do happen

to be predominantly of the White male middle class, are not sensitive in fact to the needs of the Latin, Black, or the poor.

What this finding means is that no grand jury can be sensitive to the needs of the Latin, Black or the poor if they do not know about such needs. Thus, if the usual source of knowledge on any question before the grand jury is usually its advisor, the assistant state attorney, or from themselves, it is thus the finding that grand jury quality is diminished if the felt needs of the Latin, the Black and the poor are not represented on said grand juries by members of these groups by their direct participation on grand juries.

Because other systems of government value the need to relate to the felt needs of Latins, Blacks and the poor by the direct participation of members of these groups in order to promote the general welfare, such as the citizen advisory committees to the Dade County Office of Community Development and the agencies of the Dade County Department of Human Resources, so should the grand jury system.

2. Advising the Judges

Another treatment plan would be to leave the selection process as it is, but advising the judges. . .

> "... to exercise scrutiny . . . whereby all of the people can participate directly in the administration of the government."

The foregoing was the advice of the City of Miami by resolution adopted at its November 1976 meeting of the City Commission. (See December Forum Agenda and Brief, Exhibit "A", page 12.)

This Miami resolution means that the judges themselves would assume an affirmative duty to include members of the Latin, Black and poor communities in their selection

of prospective grand juror pools and grand jury venires, in order to assure that . . . "All of the people can participate directly in the administration of the government."

FINDINGS

2.1 It is found, upon review of statements of Hon. Judge Harold Vann at the January Forum, that the judges desire to be relieved from the function of selecting prospective grand jurors. (See Exhibit "E", page 28.)

2.2 The judges already have the duty, that in their function of selecting prospective grand jurors, not to exclude such persons or to discriminate against persons in nominating prospective grand jurors because of their being Latin, Black, or poor. But if it is a legal policy that the courts have not accepted the evidence of a disproportionate small number of Latin, Black, or the poor, being on the grand jury pool or venire, as raising a legal presumption of intentional discrimination, the perception is held within the Latin, Black and the poor community that there is such discrimination despite disclaimers by the judges. (This perception is part of the community alienation that exists.) (See pages 1 and 2 of this Report.)

2.3 It is not feasible for the judges to assume the affirmative duty to select persons who are Latin, Black, or poor for prospective grand jurors. Judges already have the primary responsibility of judging cases and controversies. However, the present selection system requires the judges to select those persons who they know because they have the duty to personally nominate those who are included. (See January Forum Division Report, Exhibit "E", pages 28 and 29.) It is not feasible to expect the judges individually and collectively, to actively situate themselves so as to able to know persons outside of their class, and like

experience, as White male middle class, to select Latins, Blacks, and the poor, as prospective grand jurors.

2.4 It is a legal question, under the principle that "justice is blind" as to whether it is proper for judges to specifically select persons as prospective grand jurors who are Latin, Black or poor, and it raises questions of reverse discrimination and preferential treatment that may be unnecessary if an alternative process of selection can be employed without the direct participation of the judges. (See December Forum Division Report, Exhibit "C", pages 17 thru 19.)

The December Forum Agenda and Brief raises the question..."Should Dade County grand jurors reflect necessarily (underline added) identifiable groups of Dade County?..." To assume such an affirmative duty to [illegible] select Latins, Blacks, or the poor as prospective grand jurors may be discriminatory against persons who are not [illegible] Black or poor, as a constitutional question, or may result in a consequential erosion of [illegible] alienation of such groups who perceive discrimination or who perceive an unfair distribution in any selection of prospective grand jurors.

3. [illegible] the Selection Process

1. In General

The December Forum and the January Forum, including preliminary and follow-up research and investigation by the CRB Forum Division, have reviewed four alternative ways of selection of prospective grand jurors that is different from the present system, as set forth below:

1.1 The Pre-1970 Selection Process

The pre-1970 grand jury selection process had been described as a system where the Governor, the Supervisor of Elections (which had been an elected position), the Clerk and the Chairman of the Board of County Commissioners would appoint jury commissioners. The Community Relations Board was informed that this system came under criticism because of politics and, as a result, the present system was instituted.

1.2 The Proposed Becker Amendment

The proposed Becker Amendment would authorize the elimination of the Circuit Court Judges' function in Grand Jury Commissioners and would allow the use of a computerized random selection process. Originators deem the county voters registration list and it would be administered by an administrative clerk. (See the January Forum Agenda and Brief, Exhibit "D", pages 20 and 21.) The Community Relations Board heard the concern, however, that this proposal does not provide a sufficient system to obtain representative grand juries so as to exclude those who are not qualified. Representative Alan Becker, the sponsor of the proposed amendment, recently raised the question as to whether a computerized system re-institutes systematized discrimination against Latins, Blacks, and the poor, which a random selection process is designed to correct.

1.3 The Complete Revision of Chapter 905 Proposal by the Grand Jury Association of the State of Florida

The proposed complete revision proposal regarding the changes of the selection process is more fully described in the January Forum Agenda and Brief, Exhibit "D", pages 20, 21 thru 27, and the January Forum Report, Exhibit "E", pages 28, 29

and 20. The initiatory selection process is similar to the proposed Becker treatment, but includes the feature of the judges continuing the function of being jury commissioners in the screening, and excluding prospective grand jurors who, in their discretion, they believe are not qualified either by prescribed tests or pursuant to certain grounds. (See January Forum Agenda and Brief, Exhibit "D", pages 16, 19). In addition to the Becker criticism, Mr. Eormby raises the question that the proposal is too complicated, that reasons or grounds for exclusion are too subjective. (See January Forum Report, Exhibit "E", page 29, and Summary of Review of Grand Jury Association Proposal, Exhibit "F", pages 13 thru 16.)

The Federal Grand Jury Selection Process

The Federal Grand Jury selection process is described in the January Forum Report, Exhibit "E", pages 24, 26 thru 27. It is claimed, as reported in the January Forum Report, that the Federal Grand Jury selection process is also initiated on a random selection basis, similar to the Becker proposal. However, it has a screening process which is claimed to be more simple and objective in order subjective disqualification criteria by requesting a prospective grand juror to answer a questionnaire. Therefore it can be administered by an administrative clerk. Further, grand jurors are provided a per diem of $20.00.

The criticism has been raised that the Federal Grand Jury selection process should not be adopted as a local process because the Dade County Grand Jury has a function that is not carried by the Federal Grand Jury. This function is the "watchdog of government" function, a function inquiring into complicated operations

of government which necessitates a higher qualified grand juror than that needed by a federal grand jury.

Findings and Analysis of Needs

1. The Dade County Community Relations Board takes notice that this community of 1,500,000 persons is a [illegible] heterogeneous community, a bilingual, a bi-racial, and multi-ethnic community with more special needs to be served by its government that are unique to these characteristics, more than any other community in the State of Florida other than Dade, Florida.

2. The Dade County Community Relations Board further finds that the historic function of the grand jury system is, to protect the powerless from the arbitrary abuses of the "king" (the government), and as long as the grand jury is perceived to be a prerogative of the white middle class as a dominant group, it will be perceived that this historic function is not being served on behalf of the Latins, Blacks, and the poor, who, as minority groups, not in terms of numbers but in terms of power, are at a disadvantage.

3. The Dade County Community Relations Board further finds that if the functions of the grand jury system include broad investigatory and recommendatory functions, these functions are not being implemented to the full needs of the Latin, the Black, and the poor, are not being representatively met in relation to paragraphs 1 and 2 above.

4. The Dade County Community Relations Board further finds that the grand jury system represents one of the key institutions of government where citizens have the opportunity to participate. Therefore, a selection process which is perceived to be discriminatory by an affected group has an effect of

destroying confidence and support from the group against whom discrimination seems aimed.

5. The Dade County Community Relations Board concludes that the unhealthy condition of community alienation and sense of exclusion that exists cannot be treated by retaining the present selection process as the grand jury because by design it cannot result in quality grand juries but include the values that are set forth in these findings and analysis of needs.

D. RECOMMENDATIONS

1. The Dade County Community Relations Board recommends that the present selection process be changed by elimination of the function of the judges to select prospective grand jurors, and further recommends that a random selection system be instituted so that divergent viewpoints held by the various social classes of this community may be represented, including the Latin, the Black, and the poor.

2. Of the proposed selection processes, the Community Relations Board looks with favor upon such reform of the present selection system that would include provisions which are similar in spirit to those provisions under the federal system for selecting grand juries, such as increasing the present per diem in the Dade system from $10.00 to $20.00 to enable the poor to serve.

3. The Dade County Community Relations Board further favors the federal system because it believes that a random selection process will be acceptable only if there is a screening process of the unqualified on an objective non-discriminatory basis, and it appears the federal grand jury screening process is more inclusive of the Latin, the Black, and the poor, both by design and by result.

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In making this general recommendation, such provisions that we value from the federal system are policies such as:

3.1 Its policy that all citizens shall have the opportunity to be considered for service on federal grand juries.

3.2 Its policy that no citizen shall be excluded from service as a grand juror on account of race, color, religion, sex, national origin, or economic status.

3.3 Its policy for random selection which allows for any operating selection system to be reviewed and modified in order to be consistent with the above provisions and policies.

3.4 Its policy, regarding qualifications for grand jury, whereby any person is deemed qualified to serve.

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